

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 32469 of 2014 (G)

PETITIONER(S) :

THIRUVATHRA JAMA-ATH COMMITTEE AGED 65 YEARS
THIRUVATHRA P.O, CGAVAKKAD, THRISSUR - 680 516
REPRESENTED BY ITS PRESIDENT, A.C ZAINUDHEEN HAJI.

BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR

RESPONDENT(S) :

1. THE CHIEF INTERIM MUTHAVALLI
KERALA STATE WAKF BOARD, V.I.P ROAD, KALOOR
KOCHI- 17.

2. KERALA STATE WAKF BOARD,
REPRESENTED BY ITS CHIEF INTERI MUTHAVALLI
V.I.P ROAD, KALOOR, KOCHI - 17.

3. K.A.YOUSUF
SENIOR SUPERINTENDENT, HEAD OFFICE
KERALA STATE WAKF BOARD, VIP ROAD, KALOOR
KOCHI - 17.

ADDL.R4: K. NAVAS, S/O. BEERU SAHIB,
KARUTHA HOUSE, TIRUVATHRA, P.O. CHAVAKKAD
PIN. 680 515

ADDL.R5: P.M. HAMZA, S/O. MOIDU,
PALLIPARAMBIL HOUSE,
THIRUVATHRA, P.O. CHAVAKKAD PIN - 680 56

ADDL. R4 & R5 ARE IMPEADED AS PER ORDER DATED 6-3-
2015 IN I.A. NO. 17395/2014

ADDL R4 & R5 BY ADV. SRI.P.K.ABOOBACKER(EDAPPALLY),
ADV. SRI.T.M.VASUDEVAN & ADV. SRI.N.P.AMMU

R2 BY SC SRI.K.SHIBILI NAHA,
KERALA STATE WAKF BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 06-03-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C).No. 32469 of 2014 (G)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1- A TRUE COPY OF THE ORDER DT. 18.11.14 OF
THE 1ST RESPONDENT.

A.M. SHAFFIQUE, J.

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W.P. C. No. 32469 of 2014 - G
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Dated : 6th March, 2015

JUDGMENT

Ext.P1 order dated 18-11-2014 issued by the Chief Executive Officer of the Kerala Wakf Board, is under challenge. By virtue of Ext. P1, an order is issued by the Chief Executive Officer appointing one Mr. K.A. Yousuf, Senior Superintendent, Head Office, Kerala State Wakf Board as interim Mutavally-cum-Returning Officer for carrying out the day-to-day affairs and administration of Thiruvathra Jama-ath Palli and the institutions under it and to conduct election to the Jama-ath Committee , within a period of three months. The order came to be issued stating that though the election was conducted in 2009, the administration was not handed over to the elected committee. He proceeded on the basis that the committee now administrating the

affairs of the Wakf is an unauthorised Committee, and, therefore, there is a vacancy. In the result, it is felt that it is proper to appoint an interim Mutavalli in terms of Section 63 of the Wakf Act, 1995.

2. The facts involved in the above Writ Petition would disclose that there are certain disputes with regard to the functioning of the elected body, as a result of which Ext. P1 order came to be issued. This is challenged by the Committee who claims to be the Committee in-charge, inter alia, contending that Ext.P1 order is issued without jurisdiction, as the power under Sec. 63 can be invoked only by the Board which was not in office during the relevant time. Further it is contended that the powers of the Board cannot be delegated to the Secretary/Chief-Executive Officer and that even the Board has no power to ratify the same. It is argued that the petitioner is the duly constituted committee and no vacancy of Mutavalli is existing, as stated in

Ext.P1.

3. Counter affidavit has been filed by the 2nd respondent, inter alia, stating that there was deadlock in the management of the institution, which was required to be rectified by appointing a Muthavalli and conducting election in accordance with the procedure prescribed. It is further submitted that the action taken by the Chief Executive Officer was ratified by the Board in the meeting held on 30-12-2014.

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the Wakf Board as well as the impleading applicants.

5. The short issue to be considered is whether Ext. P1 has been issued in accordance with the provisions of the Act. It is not in dispute that the Chief Executive Officer cannot exercise the power of the Board under Section 63 of the Wakf Act. Then the

only question is whether the Board can ratify Ext. P1 issued by the Chief Executive Officer. When an order has been issued without jurisdiction, the question of ratification does not arise for consideration. An order can be ratified only if it is issued in accordance with the procedure prescribed. If the Chief Executive Officer had no power to issue an order appointing a Muthavalli by exercising the power of the Board and even by way of delegation, the Board does not have the power even to ratify the said action. Under such circumstances, without going into the merits regarding the other contentions urged, Ext. P1 is liable to be quashed.

6. Learned counsel for the Board submits that the Board is now in office. Under such circumstances, it shall be open for the Board to take appropriate action in accordance with law. They shall do so after giving notice to all the affected parties.

In the result, this Writ Petition is allowed. Ext. P1 is quashed. There will be a direction to the Wakf Board to take appropriate action in accordance with law.

Sd/- A.M. SHAFFIQUE
(Judge)

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P.S. to Judge