

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.No.39067 of 2015

Date : 08-12-2015

Between:

Syed Naseeruddin Jeelani

Alias Mumtaz

.. Petitioner

And

The State of Telangana,

Represented by its Principal Secretary,

Minority Welfare Department,

Secretariat, Hyderabad

and others

..

Respondents

Counsel for petitioner : Mr. Abdul Muqeeth Qureshi

Counsel for respondents :

The Court made the following:

ORDER:

This Writ Petition is filed for a mandamus to set-aside proceedings dated 18-11-2015 of respondent No.2-Wakf Board whereby while taking the Wakf i.e., Jamia Ilahiate Nooria and Noor Industries, situated at Bandalaguda, Ranga Reddy District, under its direct management, it has suspended the petitioner as the Muthawalli in the purported exercise of its power under Section 64(5) of the Wakf Act 1995 (for short “the Act”).

I have heard Mr. A.M. Qureshi, learned Counsel for the petitioner and Mr. M.A. Mujeeb, learned Counsel for respondent No.2.

The learned Counsel for the petitioner submitted that the impugned order placing the petitioner under suspension without issuing a show cause notice is contrary to the mandatory provisions of Section 64(5) of the Act. He has further submitted that as the suspension of the petitioner is a nullity, the action of respondent No.2 in taking the Wakf under its direct management is also illegal.

As regards the submission of the learned Counsel for the petitioner pertaining to the legality or otherwise of

the order of suspension, sub-section (5) of Section 64 of the Act reads as under :

“Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the Wakf, by an order suspend such mutawalli until the conclusion of the enquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.”

A perusal of the impugned order shows that it contains a reference to the show cause notice dated 9-5-2014. The petitioner has filed a copy of the said notice, a reading of which indicates that no whisper is made with regard to the proposal to suspend him from the office of the Muthawalli. The proviso to sub-section (5) of Section 64 of the Act reproduced above clearly envisages a reasonable opportunity of being heard against the proposed action of suspension if the same is made exceeding ten days. Therefore, in the absence of any such notice to the petitioner, the order of respondent No.2, to the extent it relates to the suspension of the petitioner as the Muthawalli, cannot be sustained and to that extent the same is set-aside. However, respondent No.2 is directed to issue a show cause notice proposing suspension of the petitioner. Upon consideration of the explanation, if any, submitted by the petitioner within the stipulated time, respondent No.2 shall pass a fresh order with regard to

the petitioner's suspension.

As regards taking the Wakf under the direct management, the learned Standing Counsel for respondent No.2 submitted that an enquiry into the allegations of commissions and omissions against the petitioner has already been commenced and that after conclusion of the enquiry a final decision will be taken as to whether the Wakf Board shall continue to have the direct management of the Wakf or not. In my opinion, when serious allegations of misfeasance and malfeasance on the part of the petitioner are made and the Wakf has substantive properties, it is not desirable to continue the petitioner in the management and the interests of the Wakf warrant keeping its properties under the management of the Wakf Board till the enquiry is completed and a final order is passed. Therefore, I am not inclined to interfere with that part of the impugned order by which the properties of the Wakf have been taken under the direct management of the Wakf Board. However, respondent No.2 is directed to complete the enquiry and pass a final order on the allegations against the petitioner within three months from the date of receipt of this order.

The Writ Petition is accordingly allowed to the extent indicated above.

As a sequel to the disposal of the Writ petition, WPMP No.50364 of 2015 filed for interim relief is disposed

of as infructuous.

Justice C.V. Nagarjuna Reddy

Date : 08-12-2015

AM