

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.10459 of 2016

ORDER:

Heard Sri Sudhakara Reddy Ponnayolu, learned counsel for the petitioner, and Sri Farhan Azam Khan, learned Standing Counsel for the 2nd respondent – Andhra Pradesh State Wakf Board.

Challenge in this writ petition is to the proceedings dated 09.03.2016 issued by the Andhra Pradesh State Wakf Board through its Chief Executive Officer, whereby the petitioner, the Mutawalli of Darga Hzt. Syed Ahmed Baba situated at Dargah Mitta, Nellore Town, SPSR Nellore District, was placed under suspension pending enquiry.

The case of the petitioner is that the proviso to Section 64(5) of the Wakf Act, 1995, requires prior opportunity of hearing being given to the petitioner for continuing the suspension beyond ten days but the said procedure has not been followed in the instant case.

The proviso to Section 64(5) of the Wakf Act, 1995, reads as under:

“Section 64....

(5) 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 inquiry:

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

In terms of the afore-stated proviso, the suspension of a Mutawalli beyond a period exceeding ten days cannot be effected unless such Mutawalli is given a reasonable opportunity of being heard against the proposed suspension.

Though Sri Farhan Azam Khan, learned Standing Counsel, would contend that a separate notice dated 09.03.2016 was also issued to the petitioner and that the same demonstrates sufficient compliance with the afore-stated proviso, this Court finds no merit in

this submission. Perusal of the said notice reflects that it was issued by way of an intimation to the petitioner to appear before the enquiry officer only and it was not issued in the context of his proposed suspension beyond ten days. The continuance of the suspension of the petitioner from the post of Mutawalli of the subject Wakf institution beyond ten days is therefore unlawful, being in violation of the statutory requirement. The impugned proceedings dated 09.03.2016 of the Andhra Pradesh Wakf Board placing the petitioner under suspension are accordingly set aside. This order shall however not preclude the Andhra Pradesh State Wakf Board from initiating action afresh, if warranted, in accordance with the due procedure.

The writ petition is allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

Date:30.03.2016

GJ