

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.16307 OF 2016

ORDER

The prayer of the petitioner in this case is as under:

“For the aforementioned reasons it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in suspending the petitioner as Mutawalli of Darga Hzt. Syed Ahmed Baba situated at Dargah Mitta, Nellore Town, SPSR Nellore District vide proceedings F.No.26/T/NLR/2012/Z.IV. dated 09-05-2016 as illegal, arbitrary, unconstitutional, contrary to the provisions of the Wakf Act, 1995 and being in violation of the principles of natural justice and for set aside the same as such with a consequential direction to the respondents to permit the petitioner to discharge the functions and duties as a mutawalli of Darga Hzt. Syed Ahmed Baba situated at Dargah Mitta, Nellore Town, SPSR Nellore District in the interests of justice, and pass such other order or orders may deem fit and proper in the circumstances of the case.”

The petitioner, a Mutawalli, was subjected to suspension for a period of ten days under proceedings dated 28.04.2016 in exercise of the powers conferred by the proviso to Section 64(5) of the Wakf Act, 1995 (for brevity, 'the Act of 1995'). Thereafter, he was given a notice detailing the allegations leveled against him. In response thereto, he filed an explanation. Having considered the same, the Wakf Board issued the impugned proceedings continuing the suspension of the petitioner as a Mutawalli till the enquiry against him was completed.

Perusal of the impugned proceedings dated 09.05.2016 reflects that the irregularities leveled against the petitioner were set out therein at great length but, having referred to the written explanation submitted by him, the Chief Executive Officer merely stated that he had perused the written explanation submitted by the petitioner and found that the same

was not satisfactory and not convincing. Except for this bald statement, there is no indication as to why the said explanation was not found satisfactory or convincing.

Section 64(5) of the Act of 1995 reads as under:

64. Removal of Mutawalli: (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 muktawalli until the conclusion of the inquiry;

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.

In the light of the aforestated provision, a Mutawalli who is subjected to suspension beyond ten days has to be given a reasonable opportunity of being heard. This would mean that in the event an explanation is offered by him in response to the allegations leveled against him, the authority must necessarily deal with it and record reasons if it is inclined to reject such explanation. Merely stating that such an explanation was found unsatisfactory and unconvincing, does not meet the statutory requirement of giving the Mutawalli concerned 'a reasonable opportunity'.

When the Court was on the verge of suspending the impugned proceedings owing to the aforestated reasons, Sri Arifulla, learned Standing Counsel for the Wakf Board, stated that the impugned proceedings dated 09.05.2016 may be set aside on the aforestated grounds giving liberty to the Wakf Board to take action afresh in accordance with law.

In that view of the matter, the writ petition is allowed setting aside the impugned proceedings dated 09.05.2016. This order shall not preclude the Wakf Board from initiating action afresh against the petitioner, if warranted, in accordance with law.

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

12th MAY, 2016.
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SANJAY KUMAR, J.