

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos. 16758 and 16683 of 2016

COMMON ORDER:

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1) Since both the writ petitions are inter-connected the following common order is passed.

2) Both the writ petitions are filed seeking issuance of writ of mandamus to declare the action of the first respondent in issuing proceedings bearing F.No.8114/KNL/K/2011/Z-IV/Supply, dated 17.05.2016, as arbitrary, illegal and contrary to the provisions of Section 65 (5) of the Wakf Act, 1995 and against the orders passed by this Court in W.P.Nos.336 of 2014, 10457 of 2016 and 13150 of 2016.

3) The facts in issue are as under:

4) The petitioners in both the writ petitions claim to be members of Shahi Jamia Mosque located at Adoni and also to be the persons interested within the meaning of Section 2 (k) of the Wakf Act, 1995 (for short "the Act). A scheme was framed for management of the said mosque including elections to the Board of Trustees by the District Court, Bellari in O.S.No.16 of 1920 dated 21.03.1921. It is said that another suit bearing O.S.No.4 of 1951 was filed for removal of trustees and for appointment of new Trustees in their place. However, a compromise decree came to be passed with regard to the mode of elections to the Board of Trustees and powers to be exercised by them. It is said that elections to the Board of Trustees of Shahi Jamia Mosque (hereinafter referred to as "Mosque") were conducted and the same was reported to the District Court, Bellari. It is said that

after expiry of the term of the Board of Trustees and when respondents 1 and 2 were trying to take steps for conducting elections to the Board of Trustees of the said Mosque, two persons filed W.P.No.336 of 2014 seeking to declare the action of respondents 1 and 2 in conducting elections as illegal and arbitrary. The said writ petition was disposed of on 03.01.2014. Pursuant to the disposal of the writ petition, the writ petitioners therein made representation to the respondents 1 and 2 for holding the elections. Contempt case was also filed stating that respondents 1 and 2 have violated the orders passed in W.P.No.336 of 2014. While things stood thus, the 1st respondent cancelled the elections held on 04.05.2015 and issued an election notification proposing to conduct elections to the Board of Trustees. Respondents 1 and 2 agreed to follow the scheme laid down in the suit for conducting elections. Thereafter, the impugned proceedings came to be issued exercising powers under Section 65 (5) of the Act. Challenging the same the present writ petitions are filed.

5) The averments in the affidavit filed in support of W.P.No.16683 of 2016, while reiterating the stand taken in W.P.No.16758 of 2016, further state that respondents 1 to 3 in the said writ petition ie. A.P.Wakf Board, Inspector Auditor Wakfs, Kurnool and Executive Officer, Shahi Jamia Masjid, Adoni have no jurisdiction or authority to interfere with the affairs of the mosque in view of the orders passed by this Court in various writ petitions. He took the Court through the scheme framed by the District Court, Bellary in O.S.No.16 of 1920 and the orders passed by this Court in W.P.No.336 of 2014 to substantiate the same.

6) A counter came to be filed by the respondents denying the averments made in the affidavits filed in support of the writ petitions. According to them the present writ petitions are not maintainable since the writ petitioners have nothing to do with the affairs of the mosque. It is further stated that Shahi Jamia Mosque was endowed by Sri Nawab Siddi Masood Khan more than 300 years ago and the mosque has huge properties, the estimated value of which is about Rs.200 crores. It is averred that though there was a compromise decree in a suit filed before the District Court but by virtue of Section 108-A of the Act, the same shall have overriding effect notwithstanding anything inconsistent therewith. Apart from that it is urged that the state of Andhra Pradesh issued Wakf Managing Committee Regulations, 2009 and after these regulations came into affect the functioning, constitution and elections of the Wakf shall be done as per these regulations. It is also averred that criminal cases came to be registered against Board of Trustees for mismanagement of the mosque which lead to filing of charge sheets as well.

7) It is stated that having regard to the nature of allegations made in the criminal cases registered against the Board of Trustees, the first respondent herein passed orders invoking Section 65 (5) of the Act which is challenged in the writ petition. In para No.6 of the counter affidavit it has been urged that the scheme framed by the District Court, Bellary in the year 1921 is not available on record. According to them the District Court Scheme is pursuant to a compromise arrived at between the parties therein, who alleged mismanagement of the defendants therein and sought rendition of accounts. It is said that this compromise decree was never followed by any of the previous

trustees. It has been specifically stated in para No.9 of the counter that pursuant to the orders in W.P.No.336 of 2014 which are reiterated in the order dated 20.04.2016 in W.P.No.13510 of 2016, a detailed order has been passed on 17.05.2016 rejecting the claim of the petitioner therein. It is further contended that the issue in the present writ petitions has nothing to do with the elections to be conducted but the impugned order is only with regard to taking over of the management by invoking the power under Section 65 (5) of the Act since it was found that there was large scale of misappropriation of the mosque property by the Board of Trustees. It is further urged that in case the elections are conducted, the petitioners can participate in the elections and that they cannot have any grievance with the direct management of the institution by the Board. In view of the above, it is stated that there are no merits in the writ petitions and the same are liable to be dismissed.

8) A reply came to be filed in W.P.No.16683 of 2016 stating that the averments made in the counter affidavit are inconsistent with the stand taken in the earlier proceedings before this Court. A specific stand is taken in the reply affidavit stating that in view of the orders passed by this court in W.P.No.336 of 2014 which has become final, the respondents are estopped from passing the order dated 17.05.2016. Hence, it is submitted that having conducted elections on 04.05.2015 it is totally incorrect on the part of the respondents to contend that there is no existence of a committee to the mosque. The body which got elected is not functioning and since the elections are not in accordance with the scheme, the petitioners approached this Court. It is urged that while holding an enquiry by Chief Executive Officer, no notice either to the Musallis of the mosque and no statement of any of

the Musalli was recorded. Apart from that prior approve of the Wakf Board was not obtained in holding the enquiry. Having regard to the totality of the circumstances stated above, it is urged that the order under challenge warrants interference.

9) In the reply affidavit, the petitioners questioned the authority of the officers in passing a revised order on the very same day on which the impugned order came to be passed.

According to them the said order was never communicated to the petitioners and no reasons are forth coming as to why a revised order came to be passed, wherein they referred to holding of elections to be conducted and also the reason for non-implementation of the District Court scheme, 1953 as being obsolete.

10) Heard Sri O.Manohar Reddy and Sri Sitam Chaparla, learned counsels appearing for the petitioners in both the writ petitions and Sri M.S.Prasad, learned Senior Counsel representing the Wakf Board. Since the pleadings are complete the writ petitions are taken up for hearing at the admission stage itself.

11) The counsels reiterated the contentions raised in the affidavit and counter affidavits filed and as such it may not be necessary to re-produce the same.

12) In order to appreciate the rival arguments, it would be necessary to refer to the earlier orders passed by this Court and also the provisions of the Wakf Act.

13) The impugned order which came to be passed on 17.05.2016 is to the effect that pursuant to number of complaints

received with regard to mismanagement of the trust, the competent authority and Executive Officer, Wakf Board visited the Mosque at Adoni on 29th and 30th April, 2016. General Public and Musallis, who gathered there, asserted that there is misappropriation and mismanagement of funds to a large extent. It was also found that the Board of Trustees, who held the office from time to time failed to submit the annual accounts of income and budget proposals and expenditure of every year for assessment of wakf fund. The whole issue was raised before the competent authority, who after examining the same passed the impugned order stating that the mosque at Adoni shall be under the direct management of the Andhra Pradesh State Wakf Board until further orders so as to set right the mismanagement and streamline the administration of the properties worth 150 to 200 crores by invoking Section 65 (5) of the Act. One Noor Mohammed, Assistant Secretary, APSWB, Sri Mohd. Shamshuddin, Superintendent, Protection Sec., Sri Sk.Mohd. Ali, Superintendent, D.M.Section and Sri M.Inayath, U.D.Inspector Auditor Wakfs, Kurnoo District, were directed to take the institution under direct management and by physical possession of the entire movable and immovable properties, which were under the control of the mosque. M.Inayath, was directed to discharge the duties as Executive Officer of the said Institution during the period of Direct Management and to manage the day to day affairs of Wakf under subject matter until further orders.

14) Prior to passing of the impugned order, writ petitions were filed before this Court questioning the proposals made by the Wakf for holding the elections. One of the earlier order which is relied upon is the order passed in W.P.No.336 of 2014, wherein

the action of the respondents therein in taking steps for conducting elections to the Board of Trustees was under challenge. After hearing both sides, this Court passed a final order, the operative portion of the order is as under:

“Prima facie, I find merit in the submission of the learned Senior Counsel. When there is a scheme in force envisaging procedure for holding elections, whoever conducts such elections cannot act contrary to the scheme. The petitioners asserted that the scheme, which was initially approved on 21.03.1921 by the District Court, Bellary, was modified on 26.09.1953. Therefore, the insistence by the petitioners that even if respondent No.1 chooses to hold elections, it shall follow the scheme, appears to me justifiable. However, so far the petitioners have not made any representation to respondent No.1 bringing to its notice the existence of the scheme and for redressal of their grievance as sought to be espoused in this writ petition. Therefore, I am not inclined to issue a Mandamus as claimed by the petitioners in this writ petition. The petitioners are permitted to make a detailed representation to respondent No.1 with a request to follow the procedure envisaged in the scheme for holding elections to the Mosque. Such representation shall be filed within two weeks from today. On receipt of such representation, respondent No.1 shall consider the same and take an appropriate decision. If respondent No.1 is convinced that the scheme referred to above shall be followed, it shall give appropriate directions to respondent No.2 for following the procedure laid down in the scheme in conducting elections. In such event, respondent No.2 shall be directed to commence the election process afresh. If respondent No.1 does not agree with the claim of the petitioners that the scheme shall be followed, it shall pass appropriate order giving reasons for rejecting the claim of the petitioners and communicate the same to them within a period of one month from the date of making representation by the petitioners. Till this process is completed, respondent No.2 shall not proceed further with the election process.”

15) A perusal of the said order shows that the grievance of the petitioner therein appears is with regard to holding of elections by the Wakf Board, ignoring the scheme framed by the District Court, Bellari. In the said writ petition this Court permitted the petitioners to make a detailed representation to the first respondent therein with a request to follow the procedure envisaged in the scheme for holding elections in the mosque. It was further held that if the first respondent is convinced that the scheme referred to has to be followed it shall give appropriate direction to the second respondent for following the procedure laid down in the scheme for holding the elections. If the first respondent failed to agree with the claim of the petitioner with regard to following the scheme, it shall be followed by an order giving reasons for rejecting the claim. It was also held that till such process is completed, the second respondent shall not proceed with the election process. The said order came to be passed on 03.01.2014.

16) On 03.05.2015 the Inspector of Wakf Board conducted elections and declared the results on 04.05.2015. A new Trust was formed and oath ceremony was held on 07.05.2015. On coming to know about the same Contempt Case No.947 of 2015 came to be filed, upon which the authorities cancelled the elections.

17) Pursuant to the order passed by this Court in W.P.No.334 of 2014, a representation was made by some of the Musallis which lead to issuance of proceedings dated 06.01.2016 for constitution of Board of Trustees by the fifth respondent therein under the supervision of Inspector Auditor of Wakfs. Aggrieved by the same W.P.No.1338 of 2016 came to be filed. By an order

dated 21.01.2016 this Court passed the following order:

“When the Writ Petition came up for hearing on admission on 20.01.2016, the learned counsel for the petitioner has requested for an adjournment for instructions from his client as to whether he is willing for conduct of elections by any of the officers of the Wakf Board. Today, learned counsel representing Mr. O.Manohar Reddy, learned counsel for the petitioner, submitted that the petitioner has no objection for conduct of elections by any of the officers of the Wakf board. In the light of this submission, respondent No.2 is permitted to conduct the elections under the supervision of Law Officer of the Wakf Board. The impugned office order, dated 06.01.2016, is, accordingly, modified to the above extent. The Writ Petition is, accordingly, disposed of.”

18) The said order has become final as the same was not challenged. Thereafter another writ petition vide W.P.No.1599 of 2016 came to be filed which was also disposed of on 22.02.2016 in terms of order passed in W.P.No.1338 of 2016.

19) On 24.03.2016 a notification came to be issued for holding of elections. Challenging the same W.P.No.10457 of 2016 came to be filed by one K.Nagir and an interim order came to be passed by this Court suspending the election notification. Further another W.P. ie. W.P.No.10682 of 2016 was filed, wherein this Court passed the following interim order.

“ This Court passed an order on 03.01.2014 in W.P. No. 336 of 2014, recognizing the fact that the scheme initially approved on 21.03.1921 by the District Court, Bellary, which was modified on 26.09.1953, would govern the election procedure and leaving it open to the Wakf Board to pass a reasoned order in the event it did not agree that the said scheme should be followed.

Sri Arifullah, learned Standing Counsel for the Wakf Board, states that no order was passed by the Wakf Board holding to the effect that the scheme should not be followed.

That being so, impugned notification which is in clear violation of the scheme cannot be acted upon.

There shall accordingly be interim stay as prayed for.”

20) The record also discloses filing of W.P.No.13150 of 2016 questioning the enrollment fee fixed for elections, wherein this Court again suspended the order dated 20.04.2016 fixing the fees for contesting the elections as it is in violation of the scheme. Thereafter, the impugned order came to be passed, which is challenged in these two writ petitions on various grounds referred to above.

21) It is also to be noted that a revised order came to be passed on the date of passing of impugned order basing on the information given by the legal advisors stating that since the District Court scheme was a compromise decree between the private parties, the same is not binding on the Wakf. The matter was placed before the competent authority of Andhra Pradesh State Wakf Board, who after examination found that the District Court scheme cannot be followed as it has become obsolete and un-enforceable. In view of the above, the Chief Executive Officer rejected the application made pursuant to the order passed in W.P.No.336 of 2014.

22) As seen from the narration of events two orders came to be passed on 17.05.2016. The first order relates to handing over of the Wakf institution and its attached properties under direct management of Wakf Board under Section 65 (5) of the Wakf Act, the second order relates to rejection of application of the writ petitioners made pursuant to the order passed in W.P.No.336 of 2014. The second order is captioned as a “Revised Order”, wherein it has been held that the District Court scheme, 1953 is un-enforceable in view of the statutory provisions of Wakf Act read with Wakf Regulations, 2009. The said revised order which

rejected the District Court scheme with regard to holding of elections is not challenged till date.

23) Therefore, the primary issue as contended by the learned counsel would be as to whether the authorities were right in passing the first order dated 17.05.2016 invoking Section 65 (5) of the Act. Since number of writ petitions questioning the holding of elections and the orders passed in some of the writ petitions giving directions with regard to holding of elections and the subsequent order dated 17.05.2016 rejecting the District Court Scheme for holding elections, it may not be necessary for this Court to go into the said aspect in these writ petitions. Suffice would it be to restrict the issue with regard to the order passed under Section 65 (5) of the Act. In order to appreciate the same it would be necessary to refer to Section 65 (5) of the Wakf Act which reads as under:

“65 (5) Notwithstanding anything contained in sub-section (1) , the Board shall take over the administration of a wakf, if the wakf Board has contravened the provisions of this Act.”

24) Before dealing with the said aspect it would be necessary to refer to preliminary objection raised by the learned counsel for the respondents with regard to maintainability of writ petitions. Sri M.S.Prasad, learned Senior Counsel would contend that since the petitioners are only Musallis they have no locus to question the impugned order. Neither the members of the Board nor any person-in-charge of the same can question the impugned proceedings. Such being the position he submits that Musallis, who are about 36 in number cannot be said to be aggrieved persons so as to invoke the writ jurisdiction of this Court. The same is strongly opposed by the learned counsel for the

petitioners in view of Section 2 (e) of the Andhra Pradesh Wakfs Managing Committee (Constitutions, Functions and Duties) Regulations, 2009 which reads as under:

“ 2 (e) “Musalli” means and includes musallies/ disciplies/devotees as the case may be who offered prayers in the Wakf/Wakf institution and includes persons who have right to perform rites in graveyard and whose names are borne on the register of musallies maintained as per these regulations.”

25) Further Section 3 (k) of the Act which deals with the person interested in Wakf, reads as under:

“3 (k) person interested in a wakf means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes-

- (i) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, khangah, maqbara, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf;
- (ii) the wakf and any descendent of the wakf and the mutawalli.”

26) Since there is no dispute that the petitioners are Musallis and as they have a right to offer prayer or perform any religious right in a mosque it cannot be said that they have no locus to challenge the action taken.

27) Section 65 (5) of the Act postulates that the Board shall take over the administration of the wakf, if there is evidence to prove that the management of the wakf contravened the

provisions of the Act notwithstanding anything contained under Section 65 (1) of the Act. Section 65 (1) of the Act states that when no suitable person is available for appointment as Mutawalli of a wakf or whether the member is of the opinion that the appointment of Mutawalli is prejudicial to the interest of the wakf, the Board may assume direct management of the wakf for such period or periods not exceeding five years in aggregate.

28) Sri O.Manohar Reddy, learned counsel for the petitioners in W.P.No.16758 of 2016 would submit that the impugned order which has been passed under Section 65 (5) of the Act has no sanctity in law. It is his case that the power of the Board to take over the administration would arise if there is evidence to prove that the management of the Wakf has contravened the provisions of the Act. Since the entire order only refers to allegations made with regard to non-submission of income tax, budget proposals and the hue and cry being raised by the public, no concrete material has been placed before the authorities to show that there was mismanagement or was there any contravention of the provisions of the Act. The only other provision under which the authorities could have been passed an order is under Section 65 (1) of the Act which is not available in the instant case. It is further urged that since the District Court Scheme is still having sanctity it is incumbent upon the authorities to follow the provisions of the scheme and it is not open to the Board to interfere with the management of the wakf.

29) Sri Sitaram Chaparla, learned counsel appearing for the petitioners in W.P.No.16683 of 2016 strenuously urges that the entire procedure adopted by the respondents in issuing the impugned order is totally incorrect and illegal. He submits that

having failed in their attempts in getting an order for holding the elections, they resorted to taking over of the management by invoking Section 65 (5) of the Act. It is his case that there is absolutely no necessity or for that matter no reasons are assigned as to why the revised order came to be passed on 17.05.2016 itself when there is already an order taking over of the mosque and its attached properties under the direct management. He referred to the provisions of the scheme and also the inconsistent stand taken in their counters with regard to the procedure to be adopted by the Board.

Section 108A of the Act, reads as under:

108-A Act to have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

30) Section 108 of the Act, gives an overriding effect notwithstanding anything inconsistent therewith. This provision came into effect from 01.11.2013. Further, Andhra Pradesh Wakfs Managing Committee (Constitution, Functions and Duties) Regulations, 2009 came to be issued in exercise of power under Section 110 of the Act. The District Court scheme though sought to be relied upon is not placed on record. Reasons for non-implementation of the District Court scheme are stated in the proceedings dated 17.05.2016. In O.S.No.4 of 1951 an amendment to the Scheme framed in O.S.No.16 of 1920 was sought. After several adjournments, the suit ended in a compromise, vide order in I.A.No.65/1953. The Wakf was not a party to the said suit. As stated above, subsequently, the Wakf Act, 1995 and the regulations for management of the Wakf

Committees came to be issued. As per Section 108-A of the Act, the same shall have overriding effect notwithstanding anything inconsistent therewith. Therefore, by virtue of Section 108-A of the Act, all the committees shall be governed by the provisions of Act. Infact, even in the order passed by this Court in W.P.No.1338 of 2016, dated 21.01.2016, the counsel for the petitioner submitted that they have no objection for the election to be conducted by the Board. Further, the order in W.P.No.336 of 2013, which dealt with holding of elections, refers to giving of a representation bringing to notice the existence of a scheme and redressal of their grievance as sought to be exposed in the writ petition. The same was rejected giving reasons on 17.05.2016, which I am told is not challenged till date . Further, the order impugned and the material collected show registration of criminal cases against the trustee by name P.Rahmatullah and others vide Crime No.118 of 2010 in I Town Police Station, Adoni. A charge sheet was filed for the offences punishable under Sections 406, 409, 420 and 465 etc. The allegations in the charge sheet show misappropriation of amount to an extent of Rs.60.00 lakhs during final years 2006 to 2011. Another case in Crime No.114 of 2012 came to be registered on 10.04.2012 against Mr.P.Rahamatullah, the acting trustee of the mosque, for the offences punishable under Sections 406, 409, 420, 468 and 506 etc. As per Section 65 (5) of the Act, the Board has got power to take over management if there is evidence to prove that management of Trust has contravened the provisions of the Act. The issue now is whether there was mismanagement of the Trust.

31) As seen from the material placed on record, number of criminal cases came to be registered against the Trust showing mismanagement apart from complaints lodged by Musalli. The

allegation is properties worth crores of rupees are being mismanaged and no proper accounts are submitted. Having regard to all the circumstances, it cannot be said that the impugned order came to be passed without jurisdiction. Though both the counsel would contend that such a power is not available under Section 65 (5) of the Act, but in view of the material collected by the Board, with regard to mismanagement of properties of the Wakf, which warrants action under the provisions of the Wakf Act, I am of the opinion that there is no illegality in the order taking over of the management of the Mosque by the Board.

32) Accordingly, both the Writ Petitions are dismissed. No order as to costs.

33) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

18.08.2016
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