

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 19005 of 2016

ORDER:

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Inaction on the part of the respondents in conducting elections for the managing committee of the Sawaran Mosque situated at Sawaran street, Karimnagar, without rectifying the draft voter list and without considering the representation of the petitioner dated 25.05.2016, as arbitrary and illegal, is the subject matter of dispute in the present Writ Petition.

2. The averments in the affidavit filed in support of the Writ Petition show that the petitioner was the President of the Managing Committee of the Sawaran Mosque situated at Sawaran street, Karimnagar. A new committee came to be constituted by the 2nd respondent herein vide proceedings dated 03.09.2015, which was challenged by the petitioner in W.P. No.31332 of 2015. Initially this Hon'ble court passed an interim order suspending the proceedings dated 03.09.2015. In view of the order passed by this Court, Respondent No.2 constituted a managing committee headed by the petitioner. The said proceedings were challenged in W.P. No.3467 of 2016, by the earlier committee constituted under the proceedings dated 03.09.2015. Having regard to the claim and counter-claim made, this Hon'ble Court disposed of W.P. No.3467 of 2016 on 23.03.2016 directing the respondent No.2 to assume the Waqf institution under its direct management under Section 65 of the Waqf Act, 1995 and consequently directed the respondent No.2 to hold the elections for the constitution of the managing committee within one month from the date of receipt of the copy of the order. Writ Appeal No.271 of 2016 filed by the petitioner herein challenging the said order was also dismissed.

3. In view of the orders passed by this Court, respondent No.2 directed respondent No.5 to take up waqf institution under the direct management and to conduct the elections for constitution of the new managing committee. After taking over of the charge, respondent No.5 started the process of enrolling the musallies by issuing a notice dated 09.05.2016. Since R-5 enrolled the persons, who are not the inhabitants of the Sawaran Mosque, the regular musallies of the said mosque, made a representation in the form of complaint dated 09.05.2016 before the respondents 2 and 3 which was also served on respondent No.5. On 10.05.2016 respondent No.5 issued notice calling upon all the Musallies to submit their Aadhar cards on or before 11.05.2016. It is said that the Musallies have submitted their Aadhar cards, but R-5 though received the same, failed to acknowledge the receipt of the said copies. On 19.05.2016 the Inspector Auditor of Waqf, Karimnagar, who is also the Election Officer, issued the proceedings F.No.15/Committee/KNR/2016 and published a draft voter list of Musallies of the Sawaran Mosque calling for the suggestions and objections if any within 10 days, which expired on 29.05.2016.

4. The grievance of the petitioner is that some of the voters, whose names are mentioned in the draft voter list, are not inhabitants of Sawarn Mosque as they are residing far away from the subject wakf institution and cannot be given any right to vote in the elections for constitution of the Managing Committee of the said mosque. It is further stated that names of some of the persons who are residing within the vicinity of the said mosque were deleted. It is urged that though the representation came to be made on 25.05.2016 but no action has been initiated till date.

5. Reiterating the objections raised in the Writ Petition, the learned counsel for the petitioner strenuously urges that the entire action of the respondents is illegal and the said process has been

done only with a view to remove the names of the persons who are in favour of the petitioner or against the respondents. His grievance is that though he made a representation on 25.05.2016 the same is not considered till date.

6. The learned standing counsel for the respondents opposed the same.

7. As seen from the averments made in the report, the main grievance of the petitioner appears to be that persons, who are not the inhabitants of that area are included in the list and persons who are residing within the vicinity of the said mosque are excluded from the voters' list. It is to be noted that the issue as to whether the names are wrongly excluded or correctly included cannot be gone in a Writ Petition filed under Article 226 of the Constitution of India. This being purely question of fact the same needs to be decided by an appropriate Forum. As per the A.P. Wakfs Managing Committee (Constitutions, functions and duties) Regulations, 2009, "Inhabitant" means a person who has place of residence, business or office in the area where Wakf institution exists/located. Section 2(e) of the Regulations defines "Musalli". As per Section 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. "Register" means register maintained by the committee showing the list of individuals who attended the wakf/wakf institution for the performance of prayers. As per Section 6 of the Regulations any person who has attained the age of 18 years is eligible to become Musalli. However, the Musalli shall be inhabitant of the area in which the Wakf/Wakf institution is situated.

8. From the above, it is clear that any Muslim who has attained

the age of 18 years and who offers prayers in the wakf/wakf institution and includes person who have right to perform rites in graveyard and whose names are borne on the register of musallies maintained as per the regulations are called Musallies. Therefore, only such of those persons, who are disciplies/devotees and who offers 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, can become Musallies.

9. As seen from the record, the grievance of the petitioner was only in respect of persons who are inhabitant of the area around the mosque. It does not state that those persons who were offering prayers in the wakf/wakf institution or who were performing rites in the grave yard as required under Section 2(e) of the Regulations. Therefore, the argument of the learned counsel for the petitioner that merely because they are residents of that area, which is near to the mosque cannot by itself entitle them to become voters. Regulation 7 which defines electorate as under :

“7.Electorate : The electorate for electing the office bearers and members of the Managing Committee shall consist of all the Musallies borne on the Register of Musallies of the Wakf/Wakf institution.”

10. Coming to the request of the petitioner for the purpose of altering the voters' list it is to be noted that the said representation was made on 25.05.2016 seeking modification of the voters' list, but as seen from the record draft voters' list is already prepared on 19.05.2016 inviting the objections, if any, within 10 days by 29.05.2016. It is the case of the learned standing counsel that final notification of the voters' list was already published and as such the request of the petitioner cannot be accepted. If the final voters' list is already prepared and published, the grievance of the petitioner cannot be accepted. If for any reason the final list of the voters is not prepared till date, the respondent/inspector shall consider the

representation dated 25.05.2016 in accordance with law and publish the final list uninfluenced by the observations made in this Writ Petition.

11. With the above observation, the Writ Petition is disposed of. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:24.06.2016

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