

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.4447 OF 2007

DATED : 20.12.2017

Between :

Syed Abdul Jaleel S/o.Late Syed Mohd. Mian,
Aged about 50 yrs, Occu : Mutawalli of Mosque Akhelee,
R/o.16-3-803, Chanchalguda,
Hyderabad

.. Petitioner

And

Syed Md.Asad Akaili S/o.Syed Munnawar (died)
per L.Rs., 3 to 9, Aged about 57 yrs, Occu : Business,
R/o.16-3-804, Chanchalguda,
Hyderabad & others.

.. Respondents



This court made the following :

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ORDER :

Petitioner was the Muthawalli of Mosque Akhelee a notified institution. Syed Mohd. Ahel Akhelee was a notified Muthawalli. On his death, the petitioner herein, who claimed to be his son was appointed as temporary Muthawalli, with a condition to obtain succession from competent authority to continue as Muthawalli. A person by name Syed Md.Asad Akelee filed complaint on 09.12.1998 against the petitioner, alleging mis-management, non-payment of wakf fund, claiming Wakf land as his own land and mis-appropriation of funds etc. Responding to the said complaint, the Wakf Board appointed Sri M.A.Hafeez Siddique as enquiry officer under Section 63 (3) of the Andhra Pradesh Wakf Act (for short 'the Wakf Act'), to conduct enquiry into the allegations. The enquiry officer conducted enquiry and submitted his report holding the charges as proved. Based on the report of the enquiry officer, the Wakf Board, vide proceedings dated 29.04.2002 removed the petitioner as Muthawalli. Aggrieved thereby, petitioner filed Appeal No.1 of 2002 before the Andhra Pradesh Wakf Tribunal, Hyderabad (for short 'the Tribunal'). The Tribunal, by its order dated 25.08.2007, dismissed the appeal affirming the removal of petitioner. Aggrieved thereby petitioner preferred this Revision under the proviso appended to Section 83 (9) of the Wakf Act.

2. Heard learned counsel for the petitioner and learned Special Government Pleader representing the office of learned Additional Advocate General for the Wakf Board.

3. Learned counsel for the petitioner submits that false allegations were levelled against the petitioner. Petitioner never mis-appropriated the funds of Wakf institution as alleged. In fact, the Wakf institution was not earning any money and therefore, the question of mis-using the funds or mis-appropriation of funds does not arise. Based on the false allegations, proceedings were initiated against the petitioner and subjected him to harassment.

4. Learned counsel further submits that the report of the enquiry officer was not furnished to the petitioner and he was not afforded opportunity to submit his explanation. On the findings recorded by the enquiry officer, the Wakf Board straight away passed order removing the petitioner from service. As the order of removal effects the status of petitioner to the office of Muthawalli, the same is *ex-facie* illegal and liable to be set aside on the ground of denial of reasonable opportunity. He would submit that though Section 64 of the Wakf Act, do not envisage prior opportunity, it has to be read into as the order is penal in nature and has got adverse civil and evil consequences.

5. Learned Special Government pleader submits that the Rules made under the Wakf Act, do not contemplate prior opportunity. Petitioner was afforded due opportunity by the enquiry officer, he has participated in the enquiry, submitted his explanation and written statements and on due consideration of the material on record, the enquiry officer submitted his report, holding the petitioner as guilty. Thus, reasonable opportunity was afforded at

the stage of conducting enquiry and therefore, merely because the report of the enquiry officer is not furnished before passing final order, the same cannot be nullified on that ground, more so, when there is no statutory provision mandating following such procedure. Furthermore, as the record itself discloses the illegalities committed by the petitioner, merely because opportunity was not afforded to him, no prejudice is caused to him.

6. The basic facts are not in dispute. Disciplinary action was initiated against the petitioner on the allegation of misappropriation and mis-use of official position. The enquiry officer submitted report holding the petitioner guilty of the allegations made and based on those findings, petitioner was removed from service. It is not in dispute that in ordinary circumstances, subject to the satisfaction of the competent authority that he is the legal heir and that other family members have no objection for he being appointed as Muthawalli, petitioner can succeed his father and a Muthawalli is entitled to continue in his office. Removal of petitioner was on the ground of alleged mis-conduct committed by him in discharge of his official functions as Muthawalli. On account of the order impugned, his status as Muthawalli is taken away and therefore, such order has got civil and evil consequences. Whenever a person is denied of official position and the order removing such person has got civil and evil consequences that order must be preceded by due procedure and opportunity. Admittedly, the report of the enquiry officer was not furnished to him before passing the order of removal. Since the report of the enquiry officer is adverse, petitioner ought to have been given opportunity to submit explanation against the findings recorded

and it is for the competent authority to independently consider the findings of the enquiry officer, vis-à-vis the explanation of Muthawalli before taking adverse decision against him. Thus, the order is liable to be set aside on this ground alone.

7. At this stage, it is appropriate to notice that the Rules, 2000 do not contemplate procedure to conduct enquiry. Having noticed the lacunae in the procedure to conduct enquiry, the Rules were amended and amended Rules were notified vide G.O.Ms.No.238 dated 24.11.2011, and Rule 24 (A) is added. Rule 24 (A) envisages detailed procedure to take disciplinary action against a Muthawalli, before removing him from service. Thus, the Rules now recognize observance of procedure which was missing earlier to the introduction of Rule 24 (A). At this stage, it is appropriate to notice that Section 64 of the Wakf Act, deals with removing of Muthawalli. It is appropriate to note that as per Sub-Section (3) no action should be taken by the Board under Sub-Section (1) unless enquiry is held into the allegations in a prescribed manner and the decision has to be taken by majority of not less than 2/3rd of the members of the Board. The Section contemplates following procedure of “prescribed manner”, before taking a decision. Thus, procedure was required to be prescribed before taking adverse decision against Muthawalli. Admittedly, procedure is now prescribed to remove a Muthawalli from the office. In view of statutory mandate merely because procedure was not prescribed cannot be a ground to say that no notice was required to be given before removing a person as Muthawalli, more so, when such removal has got civil and evil consequences. Even in the absence of amendment to Rules, 2000, it must be read into Section 64 to hold

that reasonable opportunity should be afforded. Thus, order of removal is not sustainable.

8. The Court has not gone into the merits of allegations levelled against the petitioner as the report of the enquiry officer and findings recorded therein, are not on record as of now. However, it is to be noticed that petitioner was removed as Muthawalli on 29.04.2002 and he is out of office all along, he cannot be now restored to office, at this stage.

9. Thus, the order of removal is set aside only for limited purpose of remanding the matter to the stage of furnishing report of the enquiry officer of respondent-Board. The respondent-Board shall communicate the report of the enquiry officer to the petitioner, shall follow the procedure as envisaged under Rule 24 (A) of the Rules, 2000, from the stage of furnishing of enquiry report, call for the explanation of petitioner and on consideration of the explanation, pass appropriate orders, as warranted by law. Until a decision is made, consequent to remand of this matter, *status-quo* granted by this Court on 06.10.2007 shall continue. It is made clear that petitioner cannot be restored as Muthawalli. The entire exercise shall be completed within a period of two months from the date of receipt of copy of this order.

10. The Civil Revision Petition is partly allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this civil revision shall stand closed.

P.NAVEEN RAO,J

20th December, 2017
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