

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SMT JUSTICE T.RAJANI

W.A.No.775 of 2017, W.P.No.8707 of 2016 and W.P.No.13764 of 2014

COMMON JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This Appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.V.M.P.No.2271 of 2016 in W.P.M.P.No.11033 of 2016 in W.P.No.8707 of 2016 dated 07.04.2017. The appellants herein are the petitioners in W.P.No.8707 of 2016 wherein they sought a mandamus to declare the action of the respondents in issuing proceedings dated 21.12.2015, and in continuing their suspension from the post of Mutawalli in respect of Dargah Hazrat Syed Baji Shaheed Aulia (RH) situated at Peddakakani Village and Mandal, Guntur District, as illegal, arbitrary, contrary to Section 64(5) of the Wakf Act, 1995 (for short "the Act") and Rule 24A of the Andhra Pradesh Wakf Rules, 2000 (for short "the Rules").

By his order, in W.P.M.P.No.11033 of 2016 in W.P.No.8707 of 2016 dated 20.04.2016, the Learned Single Judge observed that, in the light of Section 64(5) of the Act and Rule 24A(iv) of the Rules, it was not open to the Wakf Board to keep the appellant-writ petitioners-Mutawalis, under suspension indefinitely while the enquiry went on beyond the stipulated maximum of six months; and, accordingly, directed the Wakf Board to reinstate the appellant-writ petitioners, while making it clear that such reinstatement shall be subject to the result of the writ petition.

On a petition being filed by the A.P.Wakf Board to vacate the interim order, the Learned Single Judge has, in the order under appeal, held that the material on record did not anywhere indicate submission of any report by the enquiry officer; there was nothing wrong in the authorities appointing Janab Saheb Khan Saheb as the enquiry officer

to conduct an enquiry afresh; and this view drew support from the Constitution Bench Judgments of the Supreme Court in ***Devendra Pratap Narain Rai Sharma vs. State of U.P***¹ and ***Nand Kumar Verma vs. State of Jharkhand and others***².

On the scope of Section 64(5) of the Act, the Learned Single Judge observed that the appellant-writ petitioners were initially suspended for a period of ten days and, thereafter, the order under Section 64(5) of the Act came to be passed suspending them till completion of the enquiry; the earlier suspension was challenged, but there was no order suspending such order of suspension; Rule 24-A of the Rules required enquiry to be completed within six months; since no enquiry was conducted by the previous officer (Wahid Khan, Retired RDO), Rule 24-A of the Rules is inapplicable; Sri Janab Saheb Khan Saheb was appointed on 21.12.2015, and had already submitted his report within the prescribed period; the same could not be given effect to, in view of the orders passed by this Court; and Rule 24-A of the Rules does not give any room for the writ petitioners-Mutawallis to take advantage of the said provision. It was further observed that, as the enquiry report submitted by Janab Saheb Khan Saheb was challenged in another writ petition and in the light of the fact that crores of rupees were alleged to have been misappropriated by the Mutawallis of the Mosque, it was a fit case for vacating the interim order.

Before us reliance is placed by Sri A.M.Qureshi, learned counsel for the appellant-writ petitioners, on Section 64(5) of the Act and Rule 24-A of the Rules. Section 64 of the Act relates to removal of Mutawallis, and sub-section (5) thereof stipulates that, where any enquiry officer under sub-section (3) is proposed or commenced against any mutawalli, the Board may, if it is of the opinion that it is necessary

¹ AIR 1962 SC 1334

² (2012) 3 SCC 580

so to do in the interest of the wakf, by an order suspend such mutawalli until the conclusion of the enquiry.

The appellant-writ petitioners were placed under suspension by order dated 11.04.2014 questioning which they filed W.P.No.12581 of 2014. An interim order is said to have been passed therein observing that the suspension cannot exceed ten days; and, as the order of suspension was extended thereafter, Sri A.M.Qureshi, learned counsel for the appellant-writ petitioners states that the writ petition was dismissed as infructuous.

As the proviso to Section 64(5) of the Act stipulates that no suspension, for a period exceeding 10 days, can be made except after giving the Mutawallis a reasonable opportunity of being heard against the proposed action, the appellant-writ petitioners were put on notice informing them that the period of suspension was extended, questioning which they filed W.P.No.13764 of 2014. Even in this writ petition, no interim order was passed, and the said writ petition is still pending.

Since the original enquiry officer had expressed his inability to conduct an enquiry on account of his ill-health, another enquiry officer (a retired RDO) was appointed. On the date of the enquiry the Inspector of Wakf, who was directed to produce the records, did not appear. The enquiry officer therefore closed the enquiry, by proceedings dated 05.11.2015, on the ground that the Inspector did not appear before him.

The appellant-writ petitioners filed W.P.No.42263 of 2015 questioning the action of the Wakf Board in keeping them under suspension for an inordinately long period. The said writ petition was disposed of by order dated 29.12.2015 directing the Wakf Board to pass appropriate orders on the enquiry report dated 05.11.2015, as modified

by the report dated 21.11.2015 of the enquiry officer, within one month. As no enquiry was conducted by the enquiry officer and his report dated 05.11.2015, as modified by the report dated 21.11.2015, was only that the enquiry was being closed in the absence of the Inspector, the Wakf Board decided to conduct an enquiry afresh, and appointed another enquiry officer on 21.12.2015. The said enquiry officer submitted his report within the prescribed period. However, two other Mutawallis filed W.P.No.32283 of 2016 and, by order in W.P.M.P.No.39932 of 2016 in W.P.No.32283 of 2016 dated 27.09.2016, the Learned Single Judge directed the enquiry officer to continue the enquiry but directed him not to submit his final report to the 2nd respondent until further orders from the Court.

Sri A.M.Qureshi, learned counsel for the appellant-writ petitioners, would submit that the appellant-writ petitioners herein did not seek stay of the enquiry; the interim order passed by the Learned Single Judge in W.P.No.32283 of 2016, (a writ petition filed by two other Mutawallis), did not disable the A.P.Wakf Board from proceeding and completing the enquiry against the appellant-writ petitioners, and in submitting his report; and, for failure of the Wakf Board to take action pursuant to the enquiry report, the appellant-writ petitioners cannot be continued under suspension indefinitely.

As noted hereinabove, Section 64(5) of the Act confers power on the Wakf Board to suspend a Mutawalli pending disciplinary enquiry. Rule 24A(iv) of the Rules obligates the enquiry officer to complete the enquiry, as expeditiously as possible, and in no case to take more than six months for completing the enquiry. The said Rule stipulates that, otherwise, the enquiry officer shall be held responsible for the delay and appropriate action may be taken against him. The enquiry officer is under an obligation, in view of Clause (iv) of Rule 24A of the Rules, to

complete the enquiry within six months. His failure to do so, would confer power on the Wakf Board to hold him responsible for the delay, and to take action against him. That does not mean that the order, suspending the Mutawalli, would stand automatically revoked on account of the delay in completion of disciplinary proceedings. Reliance placed on Clause (iv) of Rule 24A of the Rules, to contend that suspension of the appellant-writ petitioners necessitates revocation, does not therefore merit acceptance.

Be that as it may no person can be kept under suspension, pending enquiry, for eternity. As the appellant-writ petitioners were placed under suspension more than three years ago, it is but appropriate that the enquiry be completed with utmost expedition, a decision is taken thereafter on whether or not any punishment should be imposed on the appellant-writ petitioners, and whether their suspension should be continued. As both Sri A.M.Qureshi, learned counsel for the appellant-writ petitioners, and Sri P.Veera Reddy, learned Senior counsel appearing on behalf of the Wakf Board, agree that the disciplinary proceedings itself be concluded with utmost expedition, and as it is informed by Sri P.Veera Reddy, learned Senior Counsel that the enquiry officer has already submitted his report, it is but appropriate that the Wakf Board passes a final order pursuant to the enquiry report with utmost expedition, and in any event within a period of two months from the date of receipt of a copy of this order.

A copy of the enquiry report, in so far as the petitioners are concerned, shall be furnished to them within two weeks from today. The appellant-writ petitioners shall submit their objections thereto within two weeks from the date of receipt of the enquiry report. The Wakf Board shall, after receipt of the appellant-writ petitioners objections to the enquiry report, consider the same and pass final

orders in accordance with law within one month thereafter. The entire exercise, culminating in an order being passed by the Wakf Board, shall be completed within two months from the date of receipt of a copy of this order. It is made clear that, in case no final orders are passed by the Wakf Board within the time stipulated hereinabove, the appellant-writ petitioners shall be reinstated as Mutawallis subject to the outcome of the disciplinary proceedings initiated against them. It is also made clear that, in case the appellant-writ petitioners do not file their objections within two weeks from the date of receipt of the enquiry report, it is open to the A.P.State Wakf Board to proceed and pass orders without granting the appellant-writ petitioners any further time to submit their objections.

W.A.No.775 of 2017 and W.P.No.8707 of 2016 are accordingly disposed of. Though W.P.No.13764 of 2014 is not on our board, both Sri A.M.Qureshi, learned counsel for the petitioners therein, and Sri S.Arifullah, learned Standing Counsel for the Wakf Board, would agree that the cause in the said writ petition does not survive, and the writ petition may be dismissed as infructuous. W.P.No.13764 of 2014 is, accordingly, dismissed as infructuous.

Miscellaneous Petitions pending, if any, shall stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

21st June, 2017
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**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE T.RAJANI**



W.A.No.775 of 2017, W.P.No.8707 of 2016 and W.P.No.13764 of 2014

Date: 21.06.2017

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