

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4619 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/ applicant is directed against the order, dated 30.8.2017, of the Telangana State Waqf Tribunal, passed in I.A.No.379 of 2017 in O.A.No.12 of 2017.

2. I have heard the submissions of *Sri D.V.Stharama Murthy*, learned senior counsel appearing for Sri N.Ashwini Kumar, learned counsel appearing for the petitioner/ applicant, and of *Sri P.Venu Gopal*, learned senior counsel appearing for Sri M.A.Mujeeb, learned counsel for the respondents 1 and 2. The 3rd respondent is stated to be not a necessary party. I have perused the material record.

3. The introductory facts, in brief, are as under:

The applicant filed the OA before the Telangana State Waqf Tribunal seeking the following reliefs:

“(1) To set aside the impugned order passed by the 2nd respondent-Chairman, dated 06/04/2017, set aside the impugned Resolution No.8/2017, dated : 10/04/2017 passed by the 1st respondent-Board, set aside the impugned order bearing F.No.18/Z1/T/Hyd/2014 dated : 12/4/2017 issued by the 1st respondent-Board and set aside the impugned recommendation No.1/2007 dated: 15.04.2017 passed by the 3rd respondent-Towliath Sub Committee, at Documents 1, 2, 3 and 4 respectively, in the interests of justice and equity.

(2) Award costs of this Application.

(3) Grant any other or further relief/s to the Applicant and pass appropriate order/s in the matter in the interests of justice and equity.”

In the said OA, the applicant also filed the present interlocutory application under Section 151 of the Code of Civil Procedure, 1908 ('the Code') seeking the following relief:

“For the reasons stated in the accompanying affidavit, the Applicant in the above case prays that this Hon'ble Tribunal may be pleased to STAY the execution, operation and implementation of the impugned order passed by the 2nd respondent-Chairman, dated 06/04/2017 the impugned Resolution No.8/2017 dated ; 10/04/2017 passed by the 1st Respondent-Board, the impugned order bearing F.No.18/Z1/T/Hyd/2014 dated:12/04/2017 issued by the 1st respondent-Board and the impugned recommendation No.1/2017 dated 15/04/2017 passed by the 3rd respondent-Sub Committee at Document No.1, 2, 3 and 4 respectively, pending disposal of the above case in the interest of justice and equity; and may pass such other order or orders as this Hon'ble Court may deem fit and thinks proper under the facts and circumstances of the case.”

The Chief Executive Officer, State Waqf Board, filed a counter affidavit resisting the said interlocutory application. On merits and by the orders impugned in this revision, the Telangana State Waqf Tribunal, dismissed the application filed by the applicant *inter alia* observing that a detailed enquiry in the matter is necessary and till such enquiry is held in the OA, it is not possible to go into the merits of the impugned order and grant an order pending disposal of the OA as sought for by the applicant. Aggrieved thereof, the applicant is before this Court.

4. The case of the applicant and the submissions made on his behalf, in brief, are as follows:

He is the Sajjada Nasheen and Muthawalli of the Dargah Hazrath Yousufain (R.A) situated at Nampally, Hyderabad. (Hereinafter referred to as, 'Waqf institution', for brevity). He is in the administration of the said Waqf institution and its properties till date and the charge of the waqf institution is with him. The 1st respondent, Waqf Tribunal, issued an order of Mutawalliship

in his favour vide order F.no.18/ Z1/ T/ Hyd./ 2014, dated 29.07.2015. The said order is also published in the Gazette, dated 31.8.2015. By the said orders, dated 29.7.2015, which are also gazetted, the competent authority of the State Waqf Board, passed orders under Section 63 of the Waqf Act, 1995, (hereinafter, 'the Act') appointing the applicant as temporary Mutawalli for a period of two years pending further action. Further, by proceedings, dated 01.12.2016, the Chief Executive Officer, Telangana State Waqf Board, permitted the applicant to continue as Mutawalli for a further period of three years from the date of the said orders, i.e., from 01.12.2016 to 30.11.2019 on the same terms and conditions, which were laid down in the afore-mentioned proceedings, dated 29.7.2015. The applicant is also permitted to take charge of the hundies bearing Nos.1 and 6 and make payments of salaries to the staff and meet day-to-day expenses and observe rituals such as lungar etcetera, subject to the following conditions:

- (i) The Hundies given under his control shall be opened with the prior permission of the Board and in presence of the officers nominated by the Board;
- (ii) He shall render the accounts of the moneys so received from the Hundies and expenditure thereon as and when the Hundies are opened;
- (iii) The Hundy shall be under the joint lock and key of the Muthawalli and Board;
- (iv) Breach of any terms & conditions of this order, and Proceedings 3rd cited, and Waqf Act, 1995 and Rules 2000 will be viewed seriously t take action as per rules."

The extension order came into effect and the period of Mutawalliship was enlarged till 30.11.2019. The initial order of appointment ceased to exist on its merger with the subsequent orders. The applicant has acquired right to hold the office of Mutawalli for the entire tenure up to 30.11.2019 as per the extension orders. There was a change in the composition of the Waqf Board in

February 2017. The 1st respondent-Waqf Board vide proceedings, dated 12.04.2017, in F.no.18/Z1/T/Hyd./2014, withdrew the office proceedings, dated 01.12.2016, where under, this applicant was permitted to continue as Mutawalli for a further period of three years from 01.12.2016 to 30.11.2019. In the said order, dated 12.04.2017, no reasons were assigned for withdrawing the proceedings, dated 01.12.2016. The applicant who was appointed as per the provisions of Section 63 of the Act is entitled to continue for the whole of tenure. If he has to be removed before completion of the tenure of office, he can only be removed in terms of Section 64 of the Act and the procedure prescribed therein. Admittedly, the applicant has contributed to the development of the Waqf institution. After he assumed charge as Muthawalli, there has been substantial increase in the income of the Waqf institution. There are no allegations against him or any charges framed nor has he acquired disqualification under Section 64 of the Act. Any proceeding which brings about cessation of tenure prematurely constitutes removal and therefore, such proceedings of cessation have to be in terms of the statute or order of appointment; otherwise such proceedings of cessation are arbitrary and illegal. Before issuing the withdrawal proceedings, dated 12.04.2017, neither a notice was issued nor was an opportunity afforded to the applicant. No reasons much less valid reasons are assigned in the proceedings, dated 12.04.2017, for not continuing the applicant as Mutawalli till the end of the tenure, i.e., 30.11.2019. Only on the constitution of the Board for Telangana State, a review of extension period of Mutawalliship with allotment of Hundies was made and the proceedings, dated 12.04.2017, were issued. The ostensible ground in the said proceedings is that as per the initial appointment, he was entitled to continue till 28.07.2017 and the proceedings, dated 01.12.2016, whereby the Mutawalliship is extended till 30.11.2019 were issued eight months before expiry of the earlier period. The respondents overlooked the fact that the tenure of two years in the initial order merged with the extension

granted, by orders, dated 01.12.2016, and when once the extension order came into effect. The action of the Board in issuing the proceedings, dated 12.04.2017, withdrawing the extension proceedings, dated 01.12.2016, for the reason that there is change in the management of the Waqf Board is arbitrary and illegal. The applicant is entitled to continue till the completion of the tenure, i.e., till 30.11.2019. The contention of the respondents that in terms of appointment vide proceedings, dated 29.07.2015, the applicant is entitled to continue only for a period of two years, i.e., till 28.07.2017 is an untenable contention in view of the subsequent proceedings, dated 01.12.2016, whereby his tenure was extended for a period of three years from the date of issue of the proceedings, dated 01.12.2016, till 30.11.2019. In the order, dated 29.07.2015, the Board reserved to itself the right to Modify/ Cancel/ Alter/ Withhold the orders issued any time without assigning any reasons thereof. But, in the subsequent orders, dated 01.12.2016, no such right is reserved. Since the appointment of this applicant as Muthawalli is under Section 63 of the Act, his removal shall also be in terms of the provision of Section 64 of the Act and not otherwise. Merely because the appointment is temporary, the contention that there is no security for tenure of the office cannot be countenanced; as the appointment is made in exercise of statutory power. When the applicant who is entitled to continue in the office of Mutawalli for the whole of tenure, his tenure cannot be curtailed unless there are justifiable grounds or such curtailment is in the interests of the institution. No such grounds exist in the instant case. The applicant, therefore, submits that the proceedings, dated 12.04.2017, and the recommendation, dated 15.04.2017, of the 3rd respondent are arbitrary and illegal and are also hit by the principles of natural justice as the said orders are not only detrimental to the rights of the applicant individually but also are prejudicial to the interests of the subject Waqf institution, its properties. The same are contrary to law and facts and are also in violation of the earlier proceedings and submissions made before

this Court in W.P.no.24471 of 2015. The applicant has got fair chance of success in the main OA. If the said orders are stayed pending disposal of the OA, no prejudice will be caused to the respondents. If the orders, dated 12.04.2017, resolution and recommendations are not suspended or stayed till final disposal of the OA, the applicant suffers serious loss and his valuable rights as well as the administration of the properties of the subject Dargah/ waqf institution will be affected seriously. He has got a *prima facie* case and balance of convenience in his favour and if no order is granted as prayed for, he suffers hardship and damages.

5. The case of the 1st respondent as stated in the counter affidavit of the Chief Executive Officer, in brief, is this:

The material allegations in the affidavit filed in support of the petition are false. The main OA and the interlocutory application are not maintainable. The respondents 2 and 3 are not necessary parties. They are unnecessarily arrayed as respondents in the proceedings. The application is liable for dismissal for misjoinder of parties. The applicant was appointed as Mutawalli under Section 63 of the Act initially for a period of two years by the then competent authority, vide proceedings, dated 29.07.2015. He was only a temporary Mutawalli. All the contrary allegations are false. The proceedings under Section 63 were issued by the Board on the applications of the applicant, dated 30.01.2015 and 15.05.2015. The applicant was appointed only for a period of two years and during the subsistence of the said two years period, i.e., even before the expiry of the said two years tenure, the proceedings, dated 01.12.2016, were issued allowing the applicant to continue for a further period of three years, when the constitution of the Board was in process. The publication of appointment of the applicant as temporary Mutawalli in the Gazette is unwarranted and not required. The orders appointing the applicant as Mutawalli were issued by the competent authority and not by the Board.

The proceedings, dated 12.04.2017, the Resolution, dated 10.04.2017, and the consequential recommendation, dated 15.04.2017, are valid, legal and sustainable as they are in accordance with the procedure. The allegation that there is violation of principles of natural justice in issuing the proceedings, dated 12.04.2017, passing resolutions and making recommendations etcetera is false. The same are neither arbitrary nor illegal. The proceedings, dated 01.12.2016, were issued during the subsistence of the earlier term of the office of Muthawalli and the said term of the applicant came to an end by 28.07.2017. The impugned proceedings, resolution and recommendation are not detrimental either to the rights of the applicant or the interests of the waqf institution. On the other hand, the continuation of the applicant is only detrimental to the interests of the institution and its properties. Since the appointment and continuation of the applicant is detrimental, he cannot claim any rights. There is no violation of earlier proceedings and the submissions made before this Court in W.P.No.24471 of 2015. The applicant has no case much less a *prima facie* case. The proceedings, dated 01.12.2016, are unwarranted as the then competent authority has appointed the applicant as Mutawalli under Section 63 of the Act when there was no vacancy in the office of Mutawalli of the institution. The proceedings, dated 01.12.2016, were issued eight months prior to the expiry of the temporary term of two years of Mutawalliship of the applicant. The said fact speaks for itself as to the nature of the case of the applicant. The fact of the matter is that the waqf institution and its interests are at stake. The applicant cannot be continued as Mutawalli of the waqf institution for the reason that he has claimed so far a sum of Rs.16,53,446/- tentatively for Urs ceremony, fabrication of Sheds, barricading and Generator etcetera from the Board in addition to the income which he received from rents and generated from other sources of the Waqf institution after excluding salaries of staff and miscellaneous expenses. No loss or damage would be caused to the applicant, if no stay orders are granted. On the other

hand, if any orders are granted, the waqf institution would suffer irreparable loss and injury. No notice under Section 89 of the Waqf Act, which is mandatory, was issued and there is no scope for dispensing with the notice under Section 89 of the Waqf Act. Since the applicant failed to make out a case, much less a *prima facie* case, his petition was rightly dismissed by the Waqf Tribunal. There is no merit in the revision and the revision petition is liable to be dismissed.

6. From the facts, rival contentions and submissions, the following aspects emerge for consideration: Exhibit P18 is the proceeding No.18/ Z1/ T/ Hyd./ 2014, dated 29.07.2015, of the Chief Executive Officer of the then A.P. State Waqf Board, whereby, after examination of the matter, by the Chief Executive Officer, A.P. State Waqf Board, orders were issued appointing the applicant as Mutawalli for a period of two years. The said appointment was admittedly under Section 63 of the Act. The same reads as under:

“The Waqf Institution known as Dargah Hazrat Yousufain situated at Nampally, together with its attached properties comprising an extent of 30,834 sq. Yds is registered and notified Waqf Institution published in A.P. Gazette No.30-A, Part-II, Dt.16/ 08/ 1984.

In the reference 2nd read above, Janab Faisal Ali Shah has been removed from Towliath of Dargah Hazrat Yousufain Ph, Nampally, U/s 64 of the Waqf Act, 1995, and the subject Waqf institution namely Dargah Hazrat Yousufain together with its attached property (moveable and immovable assets) and accounts were taken into the direct management of Board U/s 65 of the Waqf Act, 1995.

in the reference 1st read above, Janab Abul Fatah Syed Shah Hassan Shabbir Mohammad Mohammed-ul-Hussaini, Sajjada Nashin Rouza Munavare Khrud Gulburga, Karanataka State has requested to appoint him as Mutawalli of Drgzh Hazrt Youosufain, Nampally, Hyderabad.

The matter has been examined by the Chief Executive Officer, A.P. State Waqf Board in detail and same was placed before the

Competent Authority, A.P.State Waqf Board who passed orders to appoint Janab Abul Fatah Syed Shah Hassan Shabbir Mohammad Mohammed-Ul-Hussaini as temporary Mutaalli U/s 63 of the Waqf Act 1995 for a period of two (2) years, pending further action.

In pursuance to the orders of the Competent Authority, A.P.State Waqf Board, Janab Abul Fatah Syed Shah Hassan Shabbir Mohammad Mohammed-ul-Hussaini, Sajjada Nashin Bouza Munavare Khrud Gulbarga, Karnataka State is hereby appointed as Mutawalli U/s 63 of the Waqf Act, 1995, for a period of two (2) years, pending further action on temporary purpose with following specific terms and condition along with regular condition in the interest of Waqf institution.”

1. He shall manage the affairs and shall perform all rituals of subject Dargah and attached properties.
2. He shall collect the rents from all the properties and maintain true accounts of the receipts and expenditure except hundi collection.
3. The Mutawalli shall submit budget as required U/s 44 of the Waqf Act, 1995 and shall submit financial statement, i.e., income & expenditure statement from time to time as provided under the Act.
4. The Waqf Board is empowered to receive and manage the hundi collection.
5. The Mutawalli is directed to remit the 7% of Waqf Fund P.A and 30% Haq-e-intezamia on the income, excluding hundi collections.
6. He should follow the instruction issued by the Board from time to time as per Section 50 of the Waqf Act, 1995.
7. Further as per Section 101 of the Waqf Act, 1995, Mutawalli is treated as a Public Servant as such it devolves on your part to perform duties diligently and scrupulously.”

In the said proceedings, it was also stated as follows:

“The Waqf Board reserves its right to Modify/ Cancel/ Alter/ Withhold the orders issued any time without assigning any reasons thereof.”

7. The said proceedings under exhibit P18 were gazetted. Exhibit P6 is the Gazette notification. Be that as it may. During the currency of the said tenure of two years of temporary mutawalliship of the applicant, further proceedings, in F.no.18/ Z1/ T/ Hyd./ 2014/ Supplement, dated 01.12.2016, were issued by the Chief Executive Officer, Telangana State Waqf Board. By the said proceedings, dated 01.12.2016, it is ordered as follows:

“Janab. Abul Fatah Syed Hassan Shabbir Mohammad Mohammed-ul-Hussaini who was appointed as Muthawalli of Dargah Hzt Yousufain (Ph) Nampally, Hyderabad, U/s 63 of Waqf Act, for a period of (2) years, is permitted to continue as Muthawalli for a further period of (3) years from the date of issue of these orders, i.e., from 01.12.2016 to 30.11.2019, under the same terms and condition as laid down in Proceedings 3rd cited. It is also considered and he is permitted to take charge of Hundies bearing No.1 & 6, to meet the payment of salaries to the staff, day to day expenses and obscene of all rituals such as lungar etc., subject to the following conditions:

(i) The Hundies given under his control shall be opened with the prior permission of the Board and in presence of the officers nominated by the Board;

(ii) He shall render the accounts of the moneys so received from the Hundies and expenditure thereon as and when the Hundies are opened;

(iii) The Hundy shall be under the joint lock and key of the Muthawalli and Board;

(iv) Breach of any terms & conditions of this order, and Proceedings 3rd cited, and Waqf Act, 1995 and Rules 2000 will be viewed seriously t take action as per rules.

His request on other financial aspects will be considered at appropriate time.”

8. However, since the Board for Telangana State Waqf Tribunal was constituted, vide orders dated 06/ 04/ 2017, the matter of the present applicant was placed before the Waqf Board for review. As the extension period of Mutawalliship was given to the applicant with allotment of Hundies even seven

months prior to the expiration of his existing temporary mutawalliship, the Board, by a resolution, dated 10.04.2017, unanimously resolved to withdraw the proceedings, dated 01.12.2016, whereby the temporary mutawalliship was extended from 01.12.2016 to 30.11.2019. Thereafter, the Chief Executive Officer issued the impugned proceedings, dated 12.04.2017, withdrawing the proceedings, dated 01.12.2016, extending the term of the applicant as Mutawalli with allotment of Hundies in respect of the subject Waqf institution till 30.11.2019. Thus, by the proceedings, dated 12.04.2017, the earlier proceedings, dated 01.12.2016, extending the term of Mutawalliship of the applicant in respect of the subject waqf institution were withdrawn and he was directed to immediately handover charge of the Hundies to an officer of the Waqf Board. Therefore, the applicant is aggrieved.

9. Admittedly, when the matter was placed before the Board for review, the Board unanimously resolved to withdraw the proceedings, dated 01.12.2016, whereby the term of Mutawalliship of the applicant was extended with the allotment of Hundies. The Board took into consideration the fact that the extension proceedings were issued even seven months prior to the expiration of the existing temporary term of two years of Mutawalliship of the applicant. Later, pursuant to the resolution of the Board, the proceedings, dated 12.04.2017, were issued withdrawing the extension proceedings. Thus, during the currency of the two years period of temporary Mutawalliship, the tenure was extended by order, dated 01.12.2016, for a further period of three years with effect from 01.12.2016 to 30.11.2019 under the same terms and conditions laid down in the initial appointment order. What is to be noted is that the proceedings, dated 12.04.2017, withdrawing the extension proceedings, dated 01.12.2016, were issued obviously on the ground that as per the initial appointment, the applicant is entitled to continue only up to 28.07.2017, but the extension was granted seven months before the expiry of the said period. The other ground on which the 1st respondent justifies the said

proceedings is that the appointment of the applicant is only temporary. One more ground on which the 1st respondent justifies the said proceedings is that the extension proceedings, dated 01.12.2016, were issued when the constitution of the Waqf Board is in process.

10. From the material borne out by record, it is manifest that the said proceedings were issued not on the grounds that there are allegations against the applicant or that any charges are framed against him or that he indulged in any illegal activities while discharging his functions as Mutawalli or that he suffered any disqualification for continuation of his Mutawalliship. On the other hand, the record reflects that he is descendant of Hzt. Syed Yousuf Sahab (R.A), Dargah Hzt Yousufain, Nampally, and that he did administration in good faith having regard to the reputation of the holy place and that the income of the Waqf institution has increased appreciably since he took over charge as the Mutawalli. It is also borne out by record that the applicant has taken up several progressive developmental works such as erection of barricades, construction of Wazu Khana for ladies, renovation of Dome work and the internal majestic glass work and that he further got commenced construction of toilet blocks and that he maintained discipline and kept up the sanctity of the holy place. Therefore, there is not only no complaint but there is also appreciation of the work of the applicant as Mutawalli. It is also pertinent to note that before withdrawing the extension proceedings, dated 01.12.2016, by the proceedings, dated 12.04.2017, neither a notice was issued nor an opportunity was afforded to the applicant for the reason that his appointment is temporary and that the extension was given even before expiry of his tenure of two years as Mutawalli and as a new Board was in the process of being constituted at the time the impugned extension proceedings were issued.

11. Coming to the contention of the 1st respondent that the appointment of the applicant as Mutawalli is temporary and therefore, the proceedings

withdrawing his extension as Mutawalli for a period of three years are justified, it is to be noted that the applicant contends that since his appointment is under Section 63 of the Act which is extracted supra, he has security for tenure of office and that he can only be removed by the procedure envisaged under law. In this regard, since reliance was placed on Section 64, it is necessary to refer to Section 64, which reads as under:

64. Removal of mutawalli.—

(1) Notwithstanding anything contained in any other law or the deed of waqf, the Board may remove a mutawalli from his office if such mutawalli—

(a) has been convicted more than once of an offence punishable under section 61; or

(b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

(c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or

(d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(f) is employed as a paid legal practitioner on behalf of, or against, the waqf; or

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any waqf property, or in any contract made with, or any work being done for, the waqf or is in arrears in respect of any sum due by him to such waqf; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the waqf or in respect of any money or other waqf property; or

(j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fraudulently deals with the property of the waqf.

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the waqf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(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 waqf, by an order suspend such mutawalli 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.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the waqf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the waqf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the waqf are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the waqf property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the waqf property.

(8) A mutawalli of a waqf removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that waqf for a period of five years from the date of such removal."

12. Further, reliance was placed upon the decision in *P.Venu Gopal v. Union of India*¹. The facts of the cited decision would show that the petitioner therein was appointed as Director in All India Institute of Medical Sciences with

¹ (2008) 5 Supreme Court Cases 1

effect from 03.07.2003 for a period of three years and until further orders. His appointment, therefore, is a tenure appointment and in normal course, was to last up to 02.07.2008, i.e., up to 66 years of age. In this backdrop, it was held that even in case of tenure appointments, before curtailment of tenure, necessary safeguards like show cause notice and justifiable reasons are necessary. When the efforts were made to cut short his tenure, the same were restrained by the Delhi High Court, by judgment, dated 29.03.2007. Subsequently, Section 11 of the AIIMS Act was amended; sub-section (1-A) and proviso thereto were added; they had the effect of terminating the petitioner's appointment on 30.11.2017, i.e., before expiry of his normal tenure of five years. The petitioner challenged the provision before the Supreme Court. The Supreme Court held that an employer has discretion to grant or not to grant extension, having regard to the interest of the employer or the establishment, but such curtailment can only be made for justifiable reasons and in compliance with the principles of natural justice for premature termination of office. The Supreme Court in the aforesaid decision held as follows:

“... “Tenure” means a term during which the office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said post begins when he joins and it comes to an end on the completion of tenure unless curtailed on justifiable grounds.”

“From the aforesaid discussion, the principle of law stipulated by this Court that curtailment of the term of five years can only be made for justifiable reasons and compliance with principles of natural justice, for premature termination of the term of a Director of AIIMS- squarely applied also to the case of the writ petitioner as well and will also apply to any future Director of AIIMS.”

12.1 In *Timmaiah & Ors. v. State of Andhra Pradesh*², the challenge is to the provision in Section 163 introduced by A.P. Amendment Act no.8 of 2014 of A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1987. The said

² 2015(3) ALT 368 (D.B)

provision cuts short the tenure of existing Chairpersons and member of Trust Board of various temples in the erstwhile state of Andhra Pradesh, after bifurcation and formation of the present State of Andhra Pradesh. This Court held that no material was placed to show that any of the existing trust members have suffered disqualification or warrant removal in terms of Section 28 of the Act. This Court also held as follows:

“Cutting short the normal tenure which vested in the existing Trust Board members under Section 17(2) of the Act of 1987 without any rational basis, when such guarantee of tenure continues to be available to future Trust Board members, clearly discriminates against them.”

13. However, since the larger issues have to be determined in the OA (main proceeding) pending before the Waqf Tribunal, after full-fledged trial, based on the pleadings, evidence that may be adduced, submissions and the legal position relied upon, there is no need to record any findings, which will have bearing on the issues involved in the main matter. However, the case of the applicant makes it manifest that there are triable issues and that he has a *prima facie* case and that therefore, on the mere ground that the larger issues have to be decided after full-fledged trial, he cannot be denied the interim relief to which he is otherwise entitled to. Be that as it may, admittedly the proceedings curtailing the extended tenure of Mutawalliship of the applicant do not disclose any allegations against the applicant and there are no adverse reasons assigned for withdrawing the proceedings extending the tenure of the applicant. It is not the case of the Board that any charges are framed against him or that he indulged in any illegal activities while discharging his functions as Mutawalli or that he suffered any disqualification for continuation of his Mutawalliship. On the other hand, the record discloses that his performance as Mutawalli was appreciated and it was acknowledged that he did administration in good faith having regard to the reputation of the holy place and that the income of the Waqf institution increased appreciably since he took over charge

as the Mutawalli. The improvised version in the pleadings of the respondents that the applicant cannot be continued as Mutawalli of the waqf institution for the reason that he has claimed so far a sum of Rs.16,53,446/- tentatively from the Board for Urs ceremony, fabrication of Sheds, barricading and Generator etcetera in addition to the income which he received from rents and generated from other sources of the Waqf institution after excluding salaries of staff and miscellaneous expenses etcetera need not be countenanced at this interlocutory stage as no such allegations are made in any earlier proceedings including the proceeding by which the tenure of the applicant was curtailed. Suffice if it is observed that the merit of the said allegations requires to be examined only after full fledged enquiry in the OA. The contentions of the respondents that the tenure was extended even long before the expiry of the existing tenure and that the proceedings extending the tenure were issued when the constitution of the new Waqf board is under process also do not warrant consideration at this stage as it is discernable from the record that the applicant's conduct was not only not in doubt but was also clean and as admittedly, the proceedings extending the tenure were issued by a competent authority after considering the performance and conduct of the applicant. Therefore, it is *prima facie* established that if the applicant is continued as a Mutawalli till the disposal of the main proceeding (OA), no harm would be caused to the institution and its property.

14. What is to be noted is that if no interim order is granted during the pendency of the OA and the extended tenure were to expire by the date of the disposal of the OA by the Tribunal, the relief claimed by the applicant in the main application (OA) would be of no avail even in the event of his success in the OA, on merits. On weighing competing possibilities or probabilities of likelihood of injury, i.e., the amount of substantial mischief or injury, which is likely to be caused to the applicant if the interim order is refused, and comparing it with that which is likely to be caused to the respondents, if the

interim order is granted, this Court is satisfied that the balance of convenience is only in favour of the applicant. On the above analysis this Court finds that the applicant made out a *prima facie* case and that the balance of convenience is also in his favour and that the applicant made out sufficient grounds for granting an interim order subject to certain safeguards.

15. In the result, the Revision Petition is allowed and the impugned order is set aside and the application of the applicant/ revision petitioner in I.A.No.379 of 2017 in O.A.No.12 of 2017 on the file of Telangana State Waqf Tribunal is allowed in part and the respondents are directed to continue the applicant as the Mutawalli of the subject Dargah Hzt Yousufain (Rh) Nampally, Hyderabad, till the disposal of the O.A.No.12 of 2017 by the Tribunal, subject, however, to the observation that he shall not be entitled to take charge of any of the hundies until the respondents permit him to do so. Needless to state that the respondents shall do all that is needful including providing reasonable finances to the applicant, subject to accounting, to facilitate effective discharge of the functions of the Mutawalli by the applicant. The necessary exercise in the above regard shall be completed by the respondents within in two weeks from the date of receipt of a copy of this order. They may also in their considered discretion, confer, if necessary, sufficient financial powers on the applicant or give specific charge of a hundi or two to the applicant subject to any reasonable terms and conditions.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

17th November, 2017

Note:- Issue CC by 20.11.2017

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