

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 65 of 2018**

- Chhattisgarh State Waqf Board Through Its Chief Executive Officer, Devendra Nagar, Raipur, District Raipur Chhattisgarh

---- **Petitioner****Versus**

- Mohd. Shakeel Ashrafi S/o Late Mohd. Kasam, Aged About 45 Years R/o Ganjpara, Durg, Post And Tahsil Durg, District Durg Chhattisgarh

---- **Respondent**

For Petitioner	:	Shri Prateek Sharma, Advocate with Shri Tridib Bhattacharya, Advocate
For Respondent	:	Shri A.C. Sahu, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****09/07/2018**

1. Heard.
2. Learned counsel for the respondent pleads no instructions.
3. The present petition is against the order dated 12.12.2017, whereby the order passed by the Waqf Board (hereinafter referred to as "Board") dated 07.07.2017, whereby the respondent was removed from the post of Mutawalli by the Board, was stayed.
4. The perusal of the order dated 07.07.2017 would show that on the different grounds which are precisely covered within the sub-clause (g) to (j) of Section 64 (1) of the Waqf Act, 1995 (hereinafter referred to as 'the Act, 1995'), the removal of the respondent was effected. For the sake of brevity Section 64 (1) sub-clause (g) to (j) are reproduced hereunder:-

“64. Removal of mutawalli.-

XXX XXX XXX

XXX XXX XXX

XXX XXX XXX

(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 wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or

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

5. Section 64 (4) of the Act, 1995 direct that 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, may file an appeal before the Waqf Tribunal. Section 64 (4) of the Act, 1995 is reproduced hereunder:-

“64. Removal of mutawalli.-

XXX XXX XXX

XXX XXX XXX

XXX XXX XXX

(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.”

6. The perusal of the record as would show that the said order of removal dated 07.07.2017 was subject of challenge before this Court in WPC No.2044 of 2017, wherein this Court by order dated 08.08.2017 has given a liberty to the respondent to file an appeal before the Waqf Tribunal as contemplated under sub-section (4) of Section 64 of the Act, 1995. As

appears, thereafter, no appeal was filed against such order, instead an application which was pending at the behest of the respondent under Section 83 (2) of the Act, 1995, an interim application was filed before the Waqf Tribunal, wherein the order of removal passed under Section 64 of the Act, 1995 was stayed. In the application under Section 83 (2) of the Act, 1995, a prayer was made that the resolution dated 25.02.2017 whereby the respondent was removed from the post of mutawalli may be set aside. In the meanwhile, it appears that in such application, in interim petition, the Board has stayed the operation of removal by an interim order dated 12.12.2017. The order of the Waqf Tribunal dated 12.12.2017 is cryptic as is premised on the ground that the respondent is paying Nigrani Chanda to the Waqf. As against this, the ground for removal as enumerated in sub-clause (g) – (j) of Section 64 (1) is for the other reasons, which cast a duty on mutawalli that he has to maintain regular account and if he fails to submit the same for two consecutive years, the Board may take action under Section 64 of the Act, 1995. Likewise, it also contemplates that when the mutawalli wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board then his removal can be effected. The order dated 12.12.2017 do touch upon such fact and has only traveled on the ground that the Nigrani Chanda has been paid. Sub-clause g & j of Section 64 (1) of the Act, 1995 is for the other reasons for removal.

7. In a result, the order dated 12.12.2017 cannot be sustained. Accordingly, the same is set aside. With such observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge