

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.18767 of 2018

ORDER:

Heard Mr.A.M.Quereshi and Mr.Arifulla for the petitioner and the respondents respectively.

The petitioner was appointed as Muttawalli vide proceedings No.12/KNL/M/07/Z-IV dated 29.03.2007 of Mosque known as Chowk Mosque located in the Nandyal Town, Kurnool District. The operative portion of the proceedings reads thus:

“Therefore Sri P.V.H. Javid Miah S/o.P.V.H.A.Razzak Miah is hereby appointed as one of the Muthawalli of the subject wakf institution with its attached properties U/s 42 of the wakf act, 1995 in place of P.V.H.Mohiuddin Basha who expired on 05-01-2007.

The Muthawalli should discharge his legitimate duties in accordance with the provisions of the Wakf act, and rules framed there under and should follow the directions given by the Board from time to time.

The A.P.State Wakf Board reserves its rights to revise/ alter / change / modify / withdraw this proceedings at any time without assigning any reasons thereof.”

Respondent No.2, through proceedings impugned in the writ petition, finds the appointment order issued in the year 2007 as irregular and therefore proposed to

recall the orders and invites applications for appointment under Section 63 of the Wakf Act, 1995 (for short 'the Act') from all, including the petitioner.

The petitioner challenges the proceedings on two grounds. Firstly, the petitioner since has been working as Muttawalli for ten years, though some right is reserved for revoking his appointment without notice, but working as Muttawalli for ten years is a reasonable period, even if there is alleged irregularity, the petitioner is put on notice and heard, the power to recall appointment of Muttawalli is examined, thereafter, an order is passed.

In the case on hand, the respondents do not have clarity on what they are proposing to do in the matter but it appears from the proceedings that the respondents are interested in only recalling the order dated 29.03.2007.

Mr.Arifulla firstly tried to justify the proceedings impugned in the writ petition by placing reliance on the decision of this Court reported in ***Shaik Ghouse Mohiuddin v. A.P.State Wakf Board and others***¹ for

¹ 2002 (1) ALD 751

the proposition that Section 63 of the Act mandates prescription of time for an arrangement or appointment of Muttawalli is made. In the case on hand, there cannot be an appointment of Muttawalli without period, and therefore, it is irregular appointment. Since the Board has reserved its right to recall order dated 29.03.2007, it has exercised the right retained by Wakf Board and the proceedings impugned in the writ petition. Therefore, firstly he contends that the proceedings impugned in the writ petition do not suffer from illegality or irregularity warranting interference of this Court under Article 226 of Constitution of India.

He alternatively contends that if the grievance of the petitioner is that the petitioner should have been put on notice and afforded an opportunity before an arrangement either under Section 42 or 43 of the Act is made by the Wakf Board, the proceedings impugned in the writ petition can be treated as show cause notice, petitioner can be given reasonable time and submit his explanation and also request to his continuation as Muttawalli.

I have perused the proceedings. From the proceedings impugned in the writ petition, it is evident that Board is proposing to streamline appointment of Muttawalli for the subject institution either under Section 42 or under Section 63 of the Act. This Court does not wish to preclude such an exercise being undertaken by the Board. In fairness to the circumstances stated above, though not legally, in contention of the petitioner, as a matter of right he is entitled to notice, this Court is persuaded to treat the impugned notice as show cause notice by referring to simple circumstance that the abrupt discontinuation of Muttawalli after working for 10 years, does not suit the stand of Muttawalli of an institution. Therefore, the proceedings are directed to be treated as show cause notice and during the consideration of appointment of Muttawaali either under Section 42 or Section 63 of the Act, the proceedings are suspended; the petitioner is given 15 days time to submit both explanation and also a request for consideration of petitioner's claim as well for appointment of Muttawalli, the Board without fail

passes an order within four (04) weeks thereafter and communicate to all the concerned.

Writ petition is disposed of as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 07.06.2018
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