

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.20798 OF 2018

ORDER:

Heard Mr.Abdul Muqueeth Quereshi for writ petitioner and Mr.P.Veera Reddy, learned Standing Counsel for 2nd respondent.

The petitioner challenges proceedings 26/ APSWB/KNL/ Budget/2016-17/Towliath dated Nil.06.2018 suspending the petitioner from discharging the functions of Mutawalli of Chowk Masjid, Nandyal Town, Kurnool District, as illegal, ultra vires and unconstitutional.

The case of petitioner is that Chowk Masjid situated at Nandyal Town and Mandal, Kurnool District is a notified institution (for short 'the subject institution') under the Wakf Act, 1995 (for short 'the Act') vide Official Gazette No.43-A, Part II, dated 24.10.1963 at S.No.3402. The 2nd respondent through proceedings F.No.12/M/KNL/2007-IV dated 23.02.2017 issued under Section 42 of the Act recognized the petitioner as Mutawalli of subject institution. The 2nd respondent through proceedings F.No.26/ APSWB/KNL/ Budget/2016-17/Towliath dated 29.05.2018 suspended the petitioner for a period of 10 days. This was followed by show cause notice dated 31.05.2018 issued by the 2nd respondent calling upon for petitioner's explanation as to why the petitioner shall not be kept under suspension beyond 10 days, pending inquiry. The 2nd respondent thereafter issued the proceedings impugned in the writ petition and the operative portion reads as follows:

“Therefore, the suspension period of the said suspended Mutawalli Sri P.V.H.Imran Hussain vide reference 1st read above has been extended till further orders.

Sri Saheb Khan, Executive Officer is hereby appointed as Enquiry Officer U/sec.71 of Waft Act, 1995 to conduct enquiry against him.

Sri D.Altaf Hussain, Inspector Auditor Waqfs, Kurnool District is hereby kept in charge for the management of subject institution and its entire attached waqf properties till further orders”.

The petitioner replying to the charges leveled against him has given detailed explanation. The order of suspension is challenged on legal grounds viz., applicability of Section 64(5). This Court for both the reasons viz., that the inquiry is pending against petitioner into the charges to which reply is given and also that the order of suspension challenged on legal grounds does not refer to the reply of petitioner and the details furnished by 2nd respondent. The petitioner contends that his appointment as Mutawalli was under Section 42 of the Act. The petitioner has been complying with the statutory duty under Sections 45 and 46 of the Act. The impugned proceeding has been issued under Section 71 of the Act and the 3rd respondent is appointed as Inquiry Officer under Section 71 of the Act. Therefore, the power of suspension is not attracted to the case on hand. The 2nd respondent since has chosen to proceed against the petitioner under Section 71 of the Act, the suspension of petitioner under Section 64(5) of the Act which otherwise is available if the inquiry is initiated under Section 64(3) of the Act, is not available. The inquiry under Sections 70 and 71 of the Act and the inquiry under Section 64(3) of the Act are totally different and distinct. Therefore, for the contingencies

covered by Sections 70 or 71, the power of suspension under Section 64(5) is unavailable and exercise of such power is illegal. Hence, the petitioner prays for setting aside the order of suspension.

The Chief Executive Officer of 2nd respondent Board filed counter affidavit. The circumstances preceding to the order of suspension for 10 days and thereafter continuing the suspension through the order impugned in the writ petition are stated. These averments are not adverted to as they are on merits of the charges which are framed and enquired into by the 2nd respondent.

According to 2nd respondent, the order of suspension is passed under Section 64(5) of the Wakf Act, 1995, pending inquiry under Section 71 of the Act. Section 64(3) applies to removal of Mutawalli and Section 71 exclusively deals with the power of the Board to hold inquiry under the Act. Therefore, the reply of respondents is that Section 64 deals with a different situation. Section 71 is only an enabling provision under which Mutawalli etc., would be placed under suspension.

Now, the point for consideration is – whether the order of suspension issued under Section 71 of the Act is illegal and beyond the jurisdiction of 2nd respondent.

The outcome of consideration on the point is dependant on the language used in Sections 64, 70 and 71 of the Act, which reads thus:

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 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 (j) 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.

70. Inquiry relating to administration of [Waqf].—Any person interested in a [Waqf] may make an application to the Board

supported by an affidavit to institute an inquiry relating to the administration of the [Waqf] and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the [Waqf] are being mismanaged, it shall take such action thereon as it thinks fit.

71. Manner of holding inquiry.—(1) The Board may, either on an application received under section [70] or on its own motion,—]

- (a) hold an inquiry in such manner as may be prescribed; or
- (b) authorise any person in this behalf to hold an inquiry into any matter relating to a [Waqf] and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents”.

Now, the argument of the petitioner is that the inquiry since is initiated under Section 64 of the Act, the suspension under Sections 70 and 71 of the Act is unavailable.

Section 64 of the Act deals with removal of Mutawalli. Sub-section (3) thereof provides that no action shall be taken by the Board under sub-section (1), unless 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. Sub-section (5) of Section 64 provides for suspension of Mutawalli. According to petitioner, the inquiry now initiated is under Sections 70 and 71 of the Act; the power of suspension as available under sub-section (5) of Section 64 cannot and could not be relied on by the Wakf Board in the inquiry held under Sections 70 and 71. The argument appears to be untenable for the reason that Section 70 deals with inquiry relating to administration of wakf. Section 70 prescribes

the procedure for setting in motion an inquiry relating to administration of wakf. Section 71 deals with manner of holding inquiry. Sections 70 and 71 are not independent but ancillary and incidental in the overall powers exercised by the Board under the Wakf Act. Once inquiry is initiated, the inquiry may result in one or more consequences contemplated by Section 64. One of the consequences will be removal of Mutawalli. Therefore, the argument that suspension, pending inquiry, is illegal, untenable and without jurisdiction, is untenable. Section 71, as rightly contended by Sri P.Veera Reddy, deals with manner of holding inquiry by the Board.

For the above reasons, the challenge to order of suspension is not made out. The inquiry is completed within three months from the date of receipt of a copy of this order.

The writ petition fails and is, accordingly, dismissed. No order as to costs.

Pending miscellaneous petitions, if any, stand closed.

S.V.BHATT, J

11th October, 2018

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