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**HIGH COURT of CHHATTISGARH, BILASPUR****WA No. 305 of 2020**

*(Arising out of order dated 03.01.2020 passed by learned Single Judge in WP(C) No. 4749/2019 and order dated 18.05.2020 passed in REVP No. 70/2020)*

- Saiyyad Ahmad Khan S/o Late Abdul Ajeez Khan, Aged About 55 Years R/o Talapara, Sunni Masjid, Bilaspur, District Bilaspur Chhattisgarh.

**-----Appellant/ Respondent 5****VERSUS**

- Mufti Umar Faruque Mondal S/o Ansar Ali, 23 years, R/o Sunni Husaini Masjid, Talapara, Bilaspur, C.G. **-----Petitioner**
- State of Chhattisgarh, through The Secretary, S.C. & S.T. Welfare Department, manralaya, Mahanadi Bhawan Atal Nagar, Raipur, District Raipur C.G.
- The Collector, Bilaspur, District Bilaspur C.G.
- Sub Divisional Officer, Bilaspur, District Bilaspur C.G.
- C.G. State Waqf Board, Through- Chief Executive Officer, near Ambedkar Statue, Collectorate Chowk Raipur, District Raipur C.G.
- Station House Officer, P.S. Civil Lines, District Bilaspur C.G.

**-----Respondents**


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| For Appellant         | : | Mr. Prafull N. Bharat, Advocate with Mr. Vivek Shrivastava, Advocate |
| For Respondent 1      | : | Mr. Sumit Singh Rathore, Advocate                                    |
| For Respondent 5      | : | Mr. Prateek Sharma, Advocate                                         |
| For Respondent -State | : | Mr. Vikram Sharma, Dy. G.A.                                          |

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**Hon'ble Shri P.R. Ramachandra Menon, Chief Justice****Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****24/08/2020**

- The present appeal has been filed challenging the impugned order dated 03-01-2020 passed in Writ Petition (C) No. 4749/2019 whereby learned Single Judge considering the pleadings and submissions made by the learned counsels for the appellant, State and Respondent 5-Waqf Board, disposed of the writ petition with a direction to Respondent 2 and 4 to take appropriate steps in ensuring redressal of the grievance of the petitioner in respect of smooth offering of prayer at Sunni Hussain Masjid, Talapara, Bilaspur, in accordance with law.

2. The appellant being aggrieved by the operative paragraph 4 of the impugned order has filed this writ appeal pleading that Respondent 1/ petitioner has suppressed material facts and successfully obtained the impugned order *ex parte* as the notices were not issued in the writ petition to the appellant/ Respondent 5, they could not place on record the correct fact before the Single Judge and after coming into knowledge about passing of impugned order, they filed Review Petition bearing number REVP 70/2020 which came to be dismissed on 18-05-2020.
3. The submission of learned counsel for the appellant is that the learned Single Judge while deciding the Review Petition has not considered that the appellant could not have brought the correct fact as he was not issued notices. Respondent 1/Petitioner suppressed material facts and obtained the order. Respondent 1/ Petitioner was removed on 27-08-2019 by issuance of *Fatwa* (Annexure A-2 in Review Petition) by the Supreme Authority under the Sunni Muslim Community i.e. Mufti Sahabuddin Saheb, Shaikul Hadees, Madarsa Jame Ashraf, Kichhuchha Sarif U.P. Respondent 1/ Petitioner was removed prior to passing of the impugned order in his favour and by virtue of it, he cannot act and perform as *Imam* (Prayer Leader). He submits that *Fatwas* are the opinion of Muftes thus the *Fatwas* under the *Islamic* law is a judicial determination of an issue; writ petition is not maintainable.
4. Respondent 5-Waqf Board has also issued a letter/order *vide* Annexure A-3 (filed along with Review Petition) on the complaint of the appellant and permitted the Committee of the appellant to manage the work and affair of Mutwalli Sunni Hussain Masjid and requested the Collector to look into the matter and restrain and control the activities of mischievous persons of erecting board over the Masjid. Learned counsel further submitted that the learned Single Judge on the one hand while deciding the Review Petition has observed that the Court has not considered the case of the

petitioner on merits but upon going through the order passed in writ petition would reveal that the direction is to redress the grievance of the petitioner by the Respondent-authorities.

5. Learned counsel for Respondent 1/ Petitioner submits that though the time was granted to him on 14-08-2020 for seeking the instruction from his client and to make his submission i.e. Respondent 1/ Petitioner, but today the learned counsel submits that he telephonically informed about the pendency of the writ petition but Respondent 1/ Petitioner did not turn up and therefore, some further time may be granted to him. He also submits that until and unless notice is issued in this case, Respondent 1/ Petitioner will not turn up and contact him in his office.
6. Mr. Prateek Sharma, learned counsel for Respondent 5-Waqf Board submits that the petitioner is removed from *Mutwali* vide order dated 25-06-2019, on his letter/ complaint, Respondent 5 has directed the Committee of the appellant in which he was working as *Mutwali*, to manage the affairs of Masjid. But subsequently, another letter dated 26.8.2019 was issued addressing to the appellant in which it is mentioned that the appellant was removed from the post of *Mutwali* and he has also filed proceedings before the competent authority challenging the order of his removal. He submits that in the said letter/ order dated 26-08-2019 (Annexure P-1), it has been specifically mentioned that the action on the part of the appellant herein with regard to removing Respondent 1 from the post of *Imam* is illegal and directed not to interfere in occupying the post of *Paish-Imam* and the said letter/order has also been forwarded to Respondent 4 who is Assistant Survey Commissioner of Waqf Board, District Bilaspur.
7. Waqf Board is not considered with the *Fatwas* issued by the Community but the Board is governed by the rules and regulations.
8. Mr. P.N. Bharat, learned counsel for the appellant submits that Annexure

P-1 is addressed to him but the order referred is not passed by him for removing Respondent 1 from the post of *Imam* but by the Community by issuing *Fatwa*.

9. We have heard learned counsel for the respective parties and perused the record at length.
10. To appreciate the submission made by the learned counsel for the appellant, we have perused the documents on which the learned counsel has placed reliance on i.e. Annexure A-3 filed along with Review Petition, Annexure A-2, copy of *Fatwa* and the documents annexed along with the writ petition. Copy of letter/ order Annexure A-3 dated 25-06-2019 filed along with Review Petition is in favour of the appellant and permitted the appellant to manage the affairs of Masjid. But, *vide* Annexure P-1, the same Respondent 5 has clarified and issued a fresh letter which was issued subsequently on 26-08-2019 addressing the appellant that by virtue of order dated 11-12-2017, he has been removed from the post of *Mutwali* and therefore, any action taken by him for removal of Respondent 1/ Petitioner from the post of *Paish-imam* will be illegal and also instructed him not to interfere or obstruct illegally in functioning of *Paish-Imam*.
11. So far as, the grounds raised by the learned counsel for the appellant with regard to issuance of *Fatwa*, we are of the opinion that *Fatwa* is only an opinion of the Community or group of persons. The decision or *Fatwa* by anybody being not emanating by any judicial system recognized by law, it is not binding on anyone including the person, who had asked for it and it does not have a force of law. The Hon'ble Supreme Court in the matter of **Vishwa Lochan Madan v. Union of India** reported in (2014) 7 SCC 707 has considered the status of *Fatwas* and held thus:

“17. In the light of what we have observed above, the prayer made by the petitioner in the terms sought for cannot be granted. However, we observe that no Dar-ul-Qazas or for that matter, anybody or institution by any name, shall give

verdict or issue fatwa touching upon the rights, status and obligation, of an individual unless such an individual has asked for it. In the case of incapacity of such an individual, any person interested in the welfare of such person may be permitted to represent the cause of individual concerned. In any event, the decision or the fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is not binding on anyone including the person, who had asked for it. Further, such an adjudication or fatwa does not have a force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law."

12. In view of the ruling of Hon'ble Supreme Court on the issue, the submission made by the learned counsel for the appellant that the Supreme Authority issued *Fatwa* against Respondent 1/ petitioner which was not brought on record and there was suppression of fact, is not sustainable.
13. Now coming to the direction issued by the learned Single Judge, the Respondent approached this Court by filing writ petition mentioning therein that *vide* Annexure P-1 order, Waqf Board has protected the interest and work of Respondent 1/ Petitioner as *Paish-Imam* but Respondent 2 and 3 have not taken any action and under Section 28 of the Waqf Act, 1995, powers have been granted to the Collector to comply with the order passed by Respondent 4. Respondent 1/ petitioner has further pleaded and submitted that he has already approached the competent authority by filing representation but has not acted upon.
14. Be that as it may, the learned counsel for the appellant has not disputed about the existence of letter/ order dated 26-08-2019 (Annexure P-1) on the date of passing of the order and also has not made any specific submission with regard to the pleadings made in the writ petition with regard to filing of the representation before Respondent 2 and 3. It is for the authority under the Waqf Act as pleaded in the writ petition to consider the representation pending before them and to pass appropriate order(s)

while deciding the same. As the Respondent-authorities have to apply their mind while deciding the representation, we only modify the direction issued by the learned Single Judge and direct Respondent 2 & 3 to decide the representation submitted by Respondent 1/ Petitioner in accordance with law. Let this exercise be done within a period of four weeks from the date of receipt of certified copy of this order.

15. In view of the above, the appeal stands disposed of. No order as to costs.

Sd/-  
**(P.R. Ramachandra Menon)**  
Chief Justice

Sd/-  
**(Parth Prateem Sahu)**  
Judge

Pawan