



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.26402 of 2021
and
W.M.P.Nos.27861 of 2021
and
W.M.P.Nos.2971 & 2976 of 2022

Syed Mazhar Hussain

.. Petitioner

Vs.

1. The Tamil Nadu Wakf Board,
Rep. By its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 1.
2. The Chairman,
The Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 1.
3. The Election Officer/Superintendent of Wakfs,
Chennai Zone,
No.139, Dr.Besant Road,
Ice House, Triplicane,
Chennai - 5.
4. The Executive Officer/Chennai Wakf Superintendent,
No.139, Dr.Besant Road,
Ice House, Triplicane,
Chennai 5.
- 5.Syed Kasim Sakaaf
- 6.Syed Ajaz Ahmed
- 7.H.W.Shanaaz
- 8.H.Mohammed Sajath
- 9.H.Gayaz Ali
- 10.Mubeena Aamina
- 11.Haseena Bi
- 12.Syeda Ghousia Begum



13.Showkath Jahan
14.Syed Latheef
15.G.M.Syed Fasi Mohammed
16.Shabana Ayesha
17.Fathima Begum
18.Syed Thula Basha
19.S.A.Rahman
20.Syed Faizullah
21.Syed Akthar Hussain

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent dated 03.12.2021 in Proc.No.619/99/B9/Chen pursuant to the resolution of the Wakf Board dated 28.10.2021 and quash the same.

For Petitioner	: Mr.N.A.Nissar Ahamed for M/s.Mohamed Rafi
For RR1 & 2	: Mr.C.Shankar (Standing Counsel for Wakf Board)
For RR5 to 8, 11 & 13	: Mr.A.Muthukumar
For R9	: Mr.Jayesh B.Dolia for M/s.Aiyar and Dolia
For R10	: Mr.N.A.Nassir Hussain
For RR3, 4 & 12	: No appearance
For RR14 to 21	: Mr.M.K.Hidayathullah

O R D E R

This Writ Petition is filed by the petitioner challenging the proceedings of the 1st respondent dated 03.12.2021 made in Proc.No.619/99/B9/Chen, pursuant to the resolution of the Wakf Board dated 28.10.2021.

2.The Dadashamakkan Wakf, Perambur, Chennai is a registered and notified Wakf governed by a scheme framed by the Wakf Board. As per the scheme, the Wakf shall be managed by an Executive Committee elected once in three years by the Beneficiaries. As per Clause 9 of the Bye-laws, Selection/Election of Office Bearers will be within 7 branches and each branch will



select/elect 2 members from their respective branch only. Elected 14 members are entitled to select/elect the Office Bearers in the presence of Wakf Board officials with prior permission of the Tamil Nadu Wakf Board. The members of the committee will be appointed in the presence of Wakf Board official at a meeting of beneficiaries of the Wakf, by the resolution of the majority of the members present and entitled to vote. On 03.10.2021, elections were conducted by the 3rd respondent as per the Bye-Laws. Some of the candidates produced alleged consent letters of the beneficiaries to have proposed their names. The said beneficiaries were not present on the election date before the Election Officer. The Election Officer declined to accept the consent letters, as the same were not in consonance with Clause 9 and 12 of the Bye-Laws. The 2nd respondent orally instructed the 3rd respondent not to declare the results on 03.10.2021. The successful candidates, on coming to know of the same, approached the 1st respondent. The 1st respondent directed the 3rd respondent to declare the results as per law and not to withhold the results. In pursuant to the direction of the 1st respondent, the 3rd respondent declared the results on 08.10.2021. After following the procedure, 14 members were elected. The Office Bearers were also elected. The petitioner was elected as a Treasurer. While so, the 1st respondent, by the impugned proceedings dated 03.12.2021, in pursuance to the resolution of the Wakf Board dated 28.10.2021, ordered fresh election. Challenging the said order, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that once the list of elected members is forwarded to the 1st respondent, the 1st respondent has to approve the same. The 1st respondent has no power to order fresh election. Fresh election ordered, based on the representation of the unsuccessful candidates, is not valid. Once election is conducted in the presence of Wakf Officials, the list of Office Bearers must be approved by the Wakf Board. There is no power for the Wakf Board to order fresh election. The impugned order is passed without jurisdiction and authority, based on the representation of the candidates. The unsuccessful candidates ought to have approached the Wakf Tribunal and impugned order is without jurisdiction. As per Clause 9 of Bye-laws, the beneficiaries must be present and they should cast their vote. This procedure was followed in the previous election also. The consent letters produced were rightly rejected by the Election Officers, as the same is contrary to the Bye-Laws. The learned counsel appearing for the petitioner further submitted that no notice was served on the petitioner and without any enquiry, the present impugned order has been passed. The notice is affixed only in the notice board of the Dargah and it was not affixed in the residence of the petitioner. The learned counsel appearing for the petitioner



further contended that it is not correct to state that notice was served on the petitioner through Whatsapp, as the petitioner is not using Whatsapp. The 8th respondent filed O.A.No.100 of 2021, challenging the notice issued for enquiry. In view of the impugned order passed, the said O.A. was dismissed as infructuous. In any event, the impugned order is illegal, in violation of principles of natural justice and without jurisdiction and the same is liable to be set aside and prayed for allowing the Writ Petition.

4.Mr.A.Muthukumar, learned counsel appearing for the respondents 5 to 8, 11 & 13 and Mr.Jayesh B.Dolia, learned counsel appearing for the 9th respondent separately contended that they are adopting the arguments made by Mr.N.A.Nissar Ahamed, learned counsel appearing for the petitioner. In addition to that, they submitted that election of Office Bearers conducted on 03.10.2021 was not approved by the 1st respondent on the ground that the beneficiaries were not aware of the Bye-Laws. Ignorance of a law is not an excuse. Further, they submitted that three elections were held earlier, following the Bye-Laws and prayed for allowing the Writ Petition.

5.The learned counsel appearing for the 1st respondent has filed counter affidavit along with the vacate stay petition. Mr.C.Shankar, learned Standing Counsel (Wakf Board) appearing for the respondents 1 and 2 submitted that the Writ Petition challenging the proceedings of Wakf is not maintainable. If the petitioner or any other person are aggrieved by the proceedings of the Wakf, they have to approach only Wakf Tribunal as per Section 83 (2) of the Wakf Act, 1995. The learned counsel appearing for the respondents 1 and 2 further submitted that Wakf Board has supervising power over all the wakf in Tamil Nadu. There is no provision in the Wakf Act with regard to conducting election. Election to the Committee members or Office Bearers are to be conducted only as per Bye-Laws and Wakf deed, under supervision of the Wakf Board. After the election, list of members must be forwarded to the Wakf Board and only when Wakf Board approves the same, the same will come into effect. In the present case, certain complaints were made to the 3rd respondent, Election Officer. The Election Officer, without bringing to the notice of the respondents 1 and 2, conducted election and committed mistake. When officials of the Wakf Board commits mistake, it is the duty of the Wakf Board to rectify the same. The Wakf Board is the authority to conduct election and also to ratify the same. There is no irregularity in the impugned order and prayed for dismissal of the Writ Petition.

6.Mr.Hidayathhulla, the learned counsel appearing for the respondents 14 to 21, in addition to the submission made by the learned Standing Counsel (Wakf Board) appearing for the



respondents 1 and 2, submitted that election was not conducted as per Clause 9 and 12 of Bye-Laws. Earlier, beneficiaries have given consent letters and election was conducted accepting the said consent letters. In the present case, the 3rd respondent/Election Officer erroneously rejected the consent letters on the ground that beneficiaries were not present at the time of election.

7.The learned counsel appearing for the respondents 14 to 21 further contended that as per Section 81(2) of the Wakf Act, the only remedy available to the petitioner is to approach the Wakf Tribunal, the Writ Petition is not maintainable and prayed for dismissal of the Writ Petition.

8.Heard the learned counsel appearing for the petitioner, learned Standing Counsel (Wakf Board) appearing for the respondents 1 and 2, learned counsel appearing for the respondents 5 to 8, 11 & 13, learned counsel appearing for the 9th respondent, 10th respondent as well as respondents 14 to 21 and perused the entire materials available on record.

9.From the above materials, it is seen that it is the case of the petitioner that once election is conducted and list of elected candidates is forwarded to the 1st respondent, the 1st respondent has no option, except to approve the same. The 1st respondent has no authority or jurisdiction to cancel the election and order fresh election. On the other hand, it is the case of the Wakf Board that the 1st respondent has supervising power over all the Wakf in Tamil Nadu. If any irregularities are committed in conducting election, the 1st respondent has power not to approve the list of elected candidates and order fresh election. When the Wakf Board has power to conduct election, it has power to ratify the list of elected candidates and order fresh election.

10.From the materials on record, it is seen that certain complaints were lodged with Wakf Board with regard to irregularities and mistakes committed by the 3rd respondent, Election Officer. The 1st respondent, after considering the complaints and after giving opportunity to the petitioner, the contesting respondents and their Advocates, passed the impugned order. In view of the above rival submissions, it is seen that these are disputed question of facts. The learned Standing Counsel appearing for the respondents 1 and 2 and learned counsel appearing for the respondents 14 to 21 raised preliminary objection that Writ Petition is not maintainable and if the petitioner is aggrieved by the impugned order, his remedy is only before the Wakf Tribunal and relied on Section 83 of the Wakf Act. Section 83 reads as follows:



WEB COPY

"83. Constitution of Tribunals, etc.— [(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.]

(2) Any mutawalli person interested in a 2 [waqf] or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the 2 [waqf].

(3) Where any application made under subsection (1) relates to any 2 [waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the 2 [waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the 2 [waqf] or any other person interested in the 2 [waqf] or the 2 [waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such 2 [waqf] or 2 [waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.



WEB COPY

[(4) Every Tribunal shall consist of-

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member; and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.]

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:



WEB COPY

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit. "

Section 83 is very categorical with regard to power of the Wakf Tribunal to decide the issue mentioned in the said Section. It is clear that when a person is aggrieved with regard to any order relating to Wakf, he has to approach the Wakf Tribunal only.

11.The petitioner is alleging that the 2nd respondent, without any notice and without hearing the elected persons, passed resolution for fresh election. Consequently, the 1st respondent passed the impugned order, ordering fresh election in violation of principles of natural justice. On the other hand, it is the case of the respondents 1 and 2 that notice was sought to be served on the petitioner and on his refusal to receive the same, the same was affixed in the notice board of Dargah. It is the further case of the respondents 1 and 2 that petitioner was present in the Wakf Board on the date of hearing and at the time of hearing, the petitioner left the Wakf Board. According to the learned Standing Counsel appearing for the respondents 1 and 2, the same can be substantiated through CCTV recording during that time. These are the disputed question of facts and the same cannot be considered and decided in the Writ proceedings.

12.For the above reasons, the Writ Petition stands dismissed. It is open to the petitioner to approach the Tribunal raising all the objections available to him by filing an appeal. If any such appeal is filed before the Tribunal, the Tribunal is directed to consider the same within a period of six months. This Court, by the order dated 10.12.2021, granted interim stay of the impugned order of the 1st respondent dated 03.12.2021 in Proc.No.619/99/B9/Chen. The said interim order shall continue for a period of two weeks from today. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar



WEB COPY

1. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 1.
2. The Chairman,
The Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 1.
3. The Election Officer/Superintendent of Wakfs,
Chennai Zone,
No.139, Dr.Besant Road,
Ice House, Triplicane, Chennai - 5.
4. The Executive Officer/Chennai Wakf Superintendent,
No.139, Dr.Besant Road,
Ice House, Triplicane,
Chennai 5.

+1cc to Mr.C.Shankar, Advocate, S.R.No.23719
+1cc to Mr.Y.Kaja Navas, Advocate, S.R.No.23797
+1cc to Mr.A.Muthukumar, Advocate, S.R.No.23948
+1cc to M/s.Mohamed Rafi, Advocate, S.R.No.24177
+1cc to Mr.N.A.Nassir Hussain, Advocate, S.R.No.24178

W.P.No.26402 of 2021

KV[co]
NSK 11/04/2022