

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.19028 of 2022

and

W.M.P(MD)No.13900, 13901 and 13902 of 2022

M.Jaffar

... Petitioner

Vs.

- 1.The Tamil Nadu Wakf Board,
Represented by its Chairman,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 009.
- 2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 009.
- 3.The Superintendent of Waqf/Executive Officer,
Office of the Superintendent of Waqf,
No.51/80, K.A.P. Complex,
Kulavaikarapuram Railway Gate,
Palayamkottai,
Tirunvelveli District.
- 4.Haji.P.Meerasa,
- 5.Haji M.S.F.Rahman
- 6.M.Shahul Sirajudeen

7.A.Mohammed Uvaise Abdullah Sheriff

8.M.Seyad Ibrahim Moosa

9.Meer Mohammed Ajeem

10. Zubair

...Respondents

(R4 to R10 are impleaded vide Court order, dated
24.08.2022 in W.M.P(MD)No.14208 of 2022)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings in செ.மு.ஆணை:813/08/ஆ1/தூகடி, dated 03.08.2022 quash the same as illegal and consequentially directing the first respondent to hold elections to the Jamia Masjid Waqf, Thoothukudi to elect its office bearers in conformity with the Bye-Law framed by the first respondent in Na.Ka.No.GS269/T.Veli/Wa.Ka/Thu.Kudi, dated 04.08.2018 under first respondent resolution Item No.80/18 Na.ka.No.813/08/A1/thoo.Kudi/dated 04.12.2018 published in the Gazette, dated 13.02.2019 and in strict compliance of the order made in W.P(MD)No.6245 of 2022, dated 05.04.2022 within the time that may be stipulated by this Court.

For Petitioner : Mr.Ajmal Khan
For M/s.Ajmal Associates
For R1 to R3 : Mr.N.Mohideen Basha
Standing Counsel
For R4, R6 to R10 : Mr.G.Prabhu Rajadurai

ORDER

The petitioner filed this writ petition seeking for quashing the

impugned order passed by the second respondent in his proceedings in செ.மு.ஆணை:813/08/ஆ1/தூகுடி, dated 03.08.2022.

2. The petitioner is the Ex-Secretary of Jamia Masjid, Thoothukudi and General Body Member of the said Mosque. As per the impugned order, dated 03.08.2022, the second respondent appointed seven members as interim committee to administer the Masjid. The above mentioned Mosque was established in the year 1955 as per the proforma approved by the Assistant Commissioner of Wakf, Tirunelveli. In the above mentioned Mosque, the executive body consisting of 13 Mahallas and 21 executive members. There are about 10,000/- Muslim families permanently residing in Tuticorin. The Jamia Masjid Mosque Wakf is a notified Wakf in G.S.No.269 under Section 6 of the Wakf Act, 1995.

3. The president, namely, M.Shahul Hameed of the above mentioned Mosque indulged in misappropriation during his period from 23.05.2012 to 22.05.2015. The first respondent taken over the direct management by his resolution in Rc.No.813/08/B1/Tuti, dated 18.08.2015 and the same was published in Tamil Nadu Gazette Publications. The second respondent by his proceedings, dated 30.10.2015 without framing the scheme directed to conduct election proceedings without any delay.

4. The Jamath Committee members belonging to the above mentioned Mosque, one Najimudeen challenged the proceedings, dated 30.10.2015 passed by the second respondent in W.P.(MD)No.20861 of 2015 and the same was allowed. After the receipt of the copy of the order, the first respondent framed a scheme/Bye Law for the above mentioned Mosque and 21 members were also appointed for 13 Mahallas and the same was published in the Tamil Nadu Government Gazette, dated 13.02.2019 by the first respondent. In the meanwhile, the members of the Jamath preferred a representation to the respondents to prepare the eligible voters list for the Jamiya Masjid Mosque before announcing the election. The same was not considered by the respondents. Hence, a writ petition was filed by one of a member, namely, Samsudeen in W.P.(MD)No.6690 of 2017 seeking to prepare the eligible voters list of the Jamiya Masjid Mosque, Tuticorin before announcing election to the administration committee of the Jamath and the same was disposed of on 16.07.2020. Thereafter, the petitioner preferred a representation to the respondents requesting them to prepare the eligible voters list of the Jamiya Masjid, Tuticorin before announcing election to the administration committee. The petitioner submitted that even though the eligible voter list of the Jamia Masjid Mosque was issued by the third respondent, they are not conducted any election from the year 2015 to 2022 inspite of repeated representation by

the nine Mahallas of the Jamath. The Executive Committee Jamath on 23.09.2021 requesting the first respondent to conduct election through proper procedure.

5. The petitioner filed a writ petition before this Court in W.P(MD)No. 6245 of 2022 seeking direction to hold election to the Jamia Masjid Waqf, Thoothukudi to elect its office bearers in conformity with the Bye-Law framed by the first respondent in Na.Ka.No.GS269/T.Veli/Wa.Ka/Thu.Kudi, dated 04.08.2018, published in the Gazette, dated 13.02.2019 by considering the representation, dated 23.09.2021 by the petitioner. The petitioner made a representation to the respondents on 29.06.2022 requesting them to conduct the election as early as possible. The Adhoc Committee consists of seven members belongs to Jamath of Jamia Mahalla neglecting other 12 Jamath representatives. Out of seven, five members belongs to Indian Union Muslim League, an Indian Political Party. The petitioner stated that once the scheme was framed and the voters list prepared and the undertaking was given by the second respondent that the election to the Jamia Masjid Waqf will be held within a period of six months, which was recorded before this Court in W.P(MD)No.6245 of 2022, dated 05.04.2022.

6. Thereafter, Janab.A.M.Yousuf and four others filed W.P(MD)No.

8446 of 2022 before this Court, this Court by order, dated 28.04.2022 had observed that the Pallivasal is the ancient Masjid and as per the bye-laws that was in force prior to the new scheme, 18 members were to be elected and that about 50% members were to be elected from the persons residing the Jamia Masjid Mohallah and that balance 50% members were to be elected from the other locations. However, under the new scheme/bye-law, the rights of the members from the Jamia Masjid Mohallah have been reduced to 5 as against 18 and there is a corresponding increase in the number of posts to 24 from 18. This Court considering the rival submissions and directed the respondents to consider the petitioners' representation, dated 14.04.2022 within a period of thirty days from the date of receipt of copy of this order. This being so, the impugned order has been passed on 03.08.2022. This Court given a direction in W.P.(MD)No.8446 of 2022, based on which Adhoc Committee appointed and hence, this seven persons were nominated as Adhoc Committee members for the period of six months with usual condition. The second respondent by his impugned proceedings, dated 03.08.2022 appointed the Adhoc Committee for a maximum period of six months in terms of order made in W.P(MD)No. 8446 of 2022, dated 28.04.2022.

7. The contention of the petitioner is that there is no specific positive direction was passed by this Court in W.P(MD)No.8446 of 2022. The wakf

authorities on their own interpretation to facilitate some who belong to particular political party are made as member of the Adhoc Committee. The apprehension of the petitioner is that using this order, the Adhoc Committee may stay put continuously for several years and the election would not be conducted in a transparent free manner. For several years, the Wakf Board had taken up the administration for conducting election. This being so, there is no necessity for the Adhoc Committee. Hence, he filed this writ petition. This Court by order, dated 26.08.2022 directed to implead the seven Adhoc Committee members as respondents and thereby, they were impleaded.

8. The learned Standing Counsel for the respondents 1 to 3 submits that the petitioner being a Ex-Secretary of Jamia Masjid filing one petition or other directly or through others thereby successfully stalling the conduct of election. The primary concern of the Wakf Board is to hold election in a democratic manner so that the members of the Mosque would get elected and the elected members can administer the Masjid, which would be proper. There was a scheme in the year 1990, the composition of the Managing Committee was that the local members of the Jamath would be elected, out of which five from the Rawthers group, six from Thaknis and seven from Maraikayars, in total, 18 persons were the members. Further, the Mosque is the primary Mosque in the Tuticorin District, wherein, almost all the marriages and other

events are recorded. Considering the same, draft scheme was drawn and objections were called for and thereafter, draft scheme got notified by the Government Order. Again, there was some objection from one group with regard to the increase of members and the Mahallas. Some of the group felt that their power will get diluted. Hence, there have been supported opposition for the new committee. Since, the Wakf Board have been directed the management for some time, considering the directions of this Court and also for better administration. Further, for the reason that the Mosque is running a school, the education department had some objections for continuous management of school by direct management and due to which, the formation of the Adhoc Committee become necessary. Hence, the Adhoc Committee of independent members having standing in the Society nominated. Some might have political alligens, that was not the consideration. Each person has their own alligens and patronage. There is no other complaint, doubt or objections against the Adhoc Committee members. He further submitted that the impugned notification clearly states that the Adhoc Committee is only for a period of six months and by the time, election to be conducted, already steps taken and election process to be held shortly. In any event, within a period of three months, the election can be completed, if all the members co-operate and participate.

9. The learned counsel for the respondents 4, 6 to 10 filed their counter.

From the counter, it is seen that the petitioner seeks to challenge the proceedings of the second respondent, constituting an Adhoc Committee for the management of the Wakf. Any party aggrieved by the said order is to seek redressal before the Wakf Tribunal, constituted under Section 83 of the Wakf Act, 1985. Further, constituting the Adhoc Committee for interim management of a Wakf pending finalization of a scheme is the Wakf Board discretionary power and there cannot be any interference from anyone more-so under Article 226 of the Constitution of India. The Jamia Masjid, Tuticorin is a registered Wakf and is in existence right from the year 1928. During the said time, the Tuticorin Town was not even a Municipality and comprised of the residence living in a small perimeter around the Mosque. As per the proforma, the said Wakf was to be administered by Executive Committee of 18 members in accordance with pamphlet containing Rules and Regulations. Under the said pamphlet, out of 18 executive committee members, 5 from Rawthers and 6 from Thaknis and 7 from the Maraikayars. In the course of time, the Thoothukudi Town was expanded to other areas. The Jamia Mohalla is comprised of the areas around the Mosque which is situated in core of Thoothukudi Town. The increase in population in other areas, Mosques were built in other areas as well and the Muslim in other Mahallas become member of the Mosque constructed in those areas.

10. The respondents have some objections for including more areas into the administration of the Wakf, which was totally unwarranted. Hence, submitted an objection to the new scheme, the Wakf Board is the authority, who can take appropriate action in this regard. Further, the entire exercise can be completed within a period of six months and election can be conducted. He further submitted that out of seven members, only three members, namely, P.Meerasa, M.S.F.Rehman and A.Mohamed Uvais are the members of Indian Union Muslim League. The petitioner has no *locus standi* to question the same. The Adhoc Committee members are competent business man having a respectable life in Thoothukudi. Two out of seven members are professional ethics, who are well known in Thoothukudi for their professional service. The presence of such auditors are necessary to scrutinize the accounts. Further, it is only an interim arrangement for a specific period of six months. The Adhoc Committee primary concern is to run the school management smoothly and to ensure that the Masjid and its activities are conducted without any obstruction. The petitioner's objection is un-reasonable. The petitioner is in the habit of filing one petition or other and obstructing the election to the Masjid. The Adhoc Committee members will not take part in the election process and it is for the wakf authorities to conduct election in a free and proper manner.

11. Considering the submission and on perusal of the materials, it is seen that now the primary dispute appears to be the appointment of Adhoc Committee, namely, respondents 4 to 10. Few of them having alligens to the political party. The Adhoc Committee is only for a period of six months. The Adhoc Committee was primarily constituted for smooth running of the school and also to ensure that the Masjid activities are properly conducted. The Adhoc Committee members are managing the school, signing the cheques for the teaching and non-teaching staff and others. There is only one account maintained in the Masjid. They also happened to sign the salary cheque of the employees of the Masjid. By signing the salary cheques of the Masjid, they cannot be considered having control of the employees. It is known to everyone that the Adhoc Committee is only for a period of six months. This Adhoc Committee is primarily to look after administration of the school. In the impugned order, specific conditions were given how the Adhoc Committee to conduct election. It is made clear that no policy decision or any decision detrimental to the property and to the Masjid can be taken by the Adhoc Committee. The Wakf board, who is the authority to conduct the election in free and fair manner. It is further submitted that senior officer from the Wakf board would be deputed as returning officer to conduct the election in a transparent manner. All the respondents confirm that the election can be conducted within a period of three months. The apprehension of the petitioner

is that in the name of the Adhoc Committee, the administration would be carried on longer periods by the Respondents 4 to 10 is a mis-conception. In the impugned order, it is made clear that the Adhoc Committee is only for a period of six months. On the submission and undertaking given that the election can be conducted within a period of three months, this mis-conception is unwarranted.

12. In view of the above, the Adhoc Committee to continue for a period of six months as per the impugned order, which is an outer limit. This Court hopes that the election would be conducted within a period of three months and new committee would take the control of the administration by then. This Court is of the view that no reason to interfere with the impugned order. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

01.09.2022

Index : Yes / No
Internet : Yes/ No

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To

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The Tamil Nadu Wakf Board,

No.1, Jaffer Syrang Street,
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Chennai-600 009.

2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 009.

M.NIRMAL KUMAR, J.

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3.The Superintendent of Waqf/Executive Officer,
Office of the Superintendent of Waqf,
No.51/80, K.A.P. Complex,
Kulavaikarapuram Railway Gate,
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