

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7106 of 2020

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Syed Najam Ali @ Najam Ali S/o late Syed Ali Asad Jafri Motawali, Imam
Bandi Waqf Estate No.1, Gulzarbagh, Patna R/o Gulzarbagh Waqf Estate
Opposite Polytechnic College, P.S.- Alamganj, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar.
2. The Additional Chief Secretary, Deptt. of Minority Welfare, Govt. of Bihar, Patna.
3. The Additional Chief Secretary of General Administration, Patna.
4. The Revenue Secretary, Govt. of Bihar, Patna.
5. The Bihar State Shia Waqf Board through its Chairman, Haj Bhavan, Patna.
6. The Chairman, Bihar State Shia Waqf Board, Haj Bhawan, Patna.
7. The Chief Executive Officer, Bihar State Shia Waqf Board, Patna.
8. The Administrative Officer, Bihar State Shia Waqf Board, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sumit Kumar Jha
For the State	:	Mr. Arvind Kumar, AC to GA 9
For the Board	:	Mr. Md. Anjum Akhtar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

5 26-09-2023 Heard Mr. Y. V. Giri, learned senior counsel duly

assisted by Mr. Sumit Kumar Jha, learned counsel for the

petitioner; Mr. Md. Anjum Akhtar, learned counsel for the Bihar

State Shia Waqf Board and Mr. Arvind Kumar, learned AC to

GA 9 for the State.

2. The petitioner claimed to be Motawalli of the Waqf

Estate, in question, filed the present writ application seeking

quashing of the letter no. 1/Pat-19 bearing memo no. 1/Pat-973

dated 22.06.2020 whereby the petitioner has been removed from



the office of Motawalliship of Imam Bandi Waqf Estate No. 1, Gulzarbagh, Patna u/s 64(1)(h)(i)(j)(k) of the Waqf Act 1995 and the Waqf Estate has been taken under direct control by the Board u/s 65 of the Waqf Act 1995 and Administrative Officer of the Bihar State Shia Waqf Board has been appointed as Administrator with immediate effect.

3. While challenging the impugned letter, learned senior counsel vehemently submitted that the impugned letter though refers to Board's Resolution No. 9 dated 17.06.2020 but the same has never been served upon the petitioner, apart from the order being cryptic and non-reasoned, there is no compliance of provision of Section 64(3) of Waqf Act, 1995. He further submits that the procedure for removal of the Waqf Board has fully been prescribed under Section 71 of the Waqf Act 1995 which also deals with the manner of holding enquiry. Learned senior counsel further drew the attention of this Court to Rule 51 of the Waqf Rule 2002 and submission has been made that the board may either on an application received under section 70 of Act or on its own motion hold enquiry/ inspection or authorize any officer of the Board, any officer of the District Administration or any person in this behalf to hold an inquiry into any matter relating to Waqf and shall take such action



which thinks fit. Further the officer or person authorized by the Board U/s 71 of the Act shall issue notice in Form 56 or as per requirement as incurred into and shall conduct enquiry in the manner as prescribed therein, but none of the provisions have been followed.

4. He, thus contended that the removal of Mutawalli cannot be in a manner unknown to the principle as prescribed in the Act and Rules, hence removal of the petitioner is hit by the provisions mandatory to be followed before taking over any control of the Waqf Estate, in question. Further reliance has also been made over various judgments on the points of breach of natural justice, rendered by the Apex Court in the case of *M/s Steel Authority of India Ltd. Vs. STO, Rourkela-1 Circle & Others reported in 2008 (5) Supreme 281, Kranti Associates Private Limited and Another Vs. Masood Ahamed Khan and Others reported in (2010) 9 SCC 496.*

5. On the other hand, learned counsel for the Waqf Board while defending the impugned order as contained in Annexure-1 submits that the impugned order has been passed by the competent authority i.e. Waqf Board after giving opportunity of hearing to the petitioner. However, he shown his inability to defend as to whether the mandatory provisions of the Waqf Act,



1995 and the Rules 2002 has been followed in the present case or not.

6. In view of the submissions made hereinabove and after going through the impugned order this Court finds that there is complete non-observance of the mandatory provisions of the Act and the rules quoted hereinabove apart from the order being non speaking and in complete violation of the principle of natural justice.

7. Thus, this Court left with no option but to set aside the impugned order as contained in Annexures- 1 and 2 and remit the matter to the Bihar State Shia Waqf Board, Patna, who shall initiate a fresh proceeding and after following all the mandatory provisions in conformity with the principle of natural justice pass a reasoned and speaking order.

8. In view thereof, this application is disposed of.

(Harish Kumar, J)

Ranjeet/-

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