



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.11164 of 2023
and W.M.P No.11018 of 2023

M.Mubarak Ali Khan

Petitioner

VS.

- 1.The Chairman,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
- 2.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
- 3.The Superintendent of Wakf,
Waqf Board, Cuddalore Circle,
No.152, Gandhi Road,
Panruti 607 106.
- 4.A.Ajmal Khan
- 5.S.Asamathullah Khan
- 6.Z.Afzal Khan
- 7.Mohammed Ismail Subair

8.A.Altaf Hussain

Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the proceedings dated 21.03.2023 in proceedings order 4825/03/A10/KT of the 1st respondent and resolution of the 1st respondent dated 14.03.2023 in S.No. 9, Item No. 63/23 and quash the same.

For Petitioner : Mrs.A.L.Gandhimathi
Senior Counsel for
Mr.A.Saravanan

For Respondents : Mr.E.Shankar
Standing Counsel for R1 to R3

ORDER

This writ petition has been filed challenging the proceedings of the 1st respondent in 4825/03/A10/KT dated 21.03.2023 and the resolution of the 1st respondent dated 14.03.2023 pertaining to S.No.9, wherein, the 1st respondent has appointed five Trustees for the administration of the Udayarkudi Periya Pallivasal Waqf and Thaikal Waqf for the period from 14.03.2023 to 13.03.2028.

2.Heard Mrs.A.L.Gandhimathi, learned Senior Counsel appearing on behalf of the petitioner and Mr.E.Shankar, learned Standing Counsel appearing

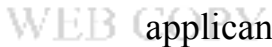


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3.The administration of the Udayarkudi Periyapallivasal Waqf and Thaikal Waqf is covered by a scheme decree passed in O.S.No.53 of 1952 and which was subsequently modified by this Court in A.S.No.5 of 1956. As per the Scheme, totally five Trustees should be appointed among the worshipers in the Mosque.

4.The 3rd respondent called for application for selection of Trustees for the administration of the Waqf. This became a subject matter of challenge in a writ petition in W.P.No.24961 of 2022. This writ petition was disposed of by this Court by an order dated 09.12.2022, directing the respondents to issue a fresh notification for appointing Trustees as per the scheme decree. Pursuant to the same, applications were called for and the petitioner in this writ petition had also applied for participating in the selection as a Trustee.

5.The grievance of the petitioner is that the 1st respondent issued a notice on 07.03.2023 to all the applicants and requested them to attend the enquiry on 14.03.2023. Accordingly, 62 persons, who had applied, participated in the enquiry. However, without considering the objections or without assigning any reasons, the 1st respondent straightaway proceeded to pass a resolution on the



6. The main ground that was urged by the learned Senior Counsel appearing on behalf of the petitioner was that totally 62 applicants had submitted their applications for being considered to be appointed as the Trustees of the Waqf. There were objections made against some of the persons, who had applied and the 1st respondent was supposed to conduct an enquiry and pass a considered order by giving some reasons as to why certain persons were selected as Trustees and as to why the others were rejected in spite of the fact that they were fully qualified for being considered to be appointed as Trustee. The other grievance that was expressed by the learned Senior Counsel was that the enquiry was conducted on 14.03.2023 and on the very same day the resolution was passed and that shows the hastiness on the part of the 1st respondent in selecting the Trustees to administer the Waqf.



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7. In the considered view of this Court, the petitioner has an efficacious alternative remedy under Section 83 of the Waqf Act, 1995. Useful reference can be made to the latest judgment of the Apex Court in ***Rashid Wali Beg vs. Farid Pindari an Others*** reported in **2022 4 SCC 414**, wherein, the Apex Court has dealt with the powers of Waqf Tribunal in detail and has explained as to the type of disputes that should be tried only by the Tribunal.

8. Admittedly, there were 62 applicants, who had participated in the selection and out of the 62 applicants, five of them have been selected and made as the Trustees of the Waqf. The Waqf Board is not expected to pass orders like a Civil Court by assigning reasons independently for the selection of certain candidates and the non-selection of the others. If really anyone is aggrieved by their non-selection, it should only be agitated before the forum where there is scope for a detailed enquiry. This Court exercising its jurisdiction under Article 226 of the Constitution of India will not undertake such an exercise involving factual determination. Whether the qualified applicants were selected as Trustees or there was discrimination in not selecting certain applicants who are otherwise qualified or whether there was any hastiness shown in the selection of the Trustees, are all matters involving



factual consideration and the Waqf Tribunal will be the appropriate forum to agitate these issues. If a writ petition is entertained for one person, who is not selected as a Trustee, it will follow suit with the other applicants also, who were not selected as Trustees. Thereby, a huge batch of writ petitions will come up before this Court and this Court has to deal with each and every case and such an exercise should not be undertaken in a writ jurisdiction. This is more so, since there is an efficacious alternative remedy available to the petitioner.

9. In the light of the above discussion, except giving this liberty to the petitioner to agitate his grievance before the concerned Tribunal, no further orders can be passed in this writ petition.

10. In the result, this writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

13.04.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
SSR

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N. ANAND VENKATESH, J.

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