

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.03.2023**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.5572 of 2023

and

W.M.P.(MD) Nos.5196 and 5197 of 2023

Mohammed Sheriff

... Petitioner

/vs./

1.The Tamil nadu Waqf Board,
represented by its Executive Officer,
No.1, Jaffer Syrang Street,
Vallalseethakathi Nagar,
Chennai.

2.The Superintendent of Waqf,
Tamil Nadu Waqf Board,
Tirunelveli Regional Office,
Tirunelveli.

3.Mohamed Mahin Abubackar
(R3 has been impleaded vide
order dated 17.03.2023)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned election notification issued by the 2nd respondent in Na.Ka.G.S.No. 13/Va.Ka.The.A/Thi.Veli/2023 dated 06.03.2023 and quash the same as illegal.

For Petitioner : Mr.M.Mohaboob Athiff for
Mr.M.Arsathul Hameed

For Respondents : Mr.Ajmal Khan Senior Counsel for
Mr. D.S.Haroon Rasheed Standing Counsel

ORDER

A decision by the first respondent to hold elections in respect of Kuthba Prayer Mosque @ Meerasa Pallivasal has catapulted various parties into action.

2.The writ petitioner has filed the above writ petition questioning the election notification primarily on the ground that the second respondent, the Superintendent of Waqf, Tirunelveli, has put up the notification stating that the voter list would include only those persons, who have been inducted as members up to the year 2010 and post 2010, all qualified voters would be deprived of participating in the election process.

3.The learned counsel for the petitioner would submit that the petitioner is a resident of Kanyakumari District and a member and subscriber of the Kuthba Prayer Mosque @ Meerasa Pallivasal, which is a notified Waqf and which comes under the control and supervision of the first respondent Board. This Waqf was traditionally administered by an Administrative Committee consisting of 12 members selected from amongst the general body members, who, in turn, were the subscribers to the petition mentioned Waqf. Therefore, such an elected body as per Section 3(i) of the Waqf Act, 1995 qualifies to be the Mutawalli of the Waqf. The Administrative Committee was to be selected for a term of three years and the Committee so selected was to be approved by the Waqf Board, as it had control and superintendence over the Waqf in the State.

4.It is the contention of the learned counsel for the petitioner that as regards the petition mentioned Waqf, post the year 2013, there was no approved committee of management/Mutawalli and no Mutawalli was recognized by the Board and the persons, who claim to be the management, were mismanaging the Waqf. In fact, this Committee continued after the expiry of their term. The first respondent had passed a special resolution No.5 dated 14.06.1990 to assume

direct management of the Waqf on the expiry of the term of the then elected Committee. This resolution has also been upheld by this Court and the respondent Board had taken over the management of the Waqf by proceedings dated 26.10.2021. This was challenged in W.P.(MD) No.20474 of 2021 and this Court, taking note of the fact that there was no approved Committee/Mutawalli for the Waqf and that the Board has taken over the management of the Waqf, had directed the second respondent to assume full charge of the management and to immediately take steps to appoint the Mutawalli and to hold the elections. The petitioner in that writ petition was directed to forthwith hand over the voters list up to the year 2010, so as to set in motion the election process.

5.It is the contention of the petitioner that to his shock, he had come across the impugned publication, wherein the second respondent had issued the impugned notification calling for deletion of the names and correction of the voters list of the year 2010, which he proposed to take as the final voters list. The second respondent had overlooked the earlier direction of the first respondent, wherein he was directed the second respondent to finalise a fresh voters list from the list of subscribers and by undertaking a streetwise voters inclusion.

6.The learned counsel for the petitioner would submit that the earlier order of this Court in W.P.(MD) No.20474 of 2021 was totally misconstrued. The learned Judge had only directed the petitioner therein to hand over the voters list up to the year 2010 and had directed the second respondent to take charge of the management of the Waqf. However, nowhere in the said order, the learned Judge had stated that post 2010 voters could not be considered. Such an order has not been passed by this Court. Further, the first respondent has directed the second respondent to prepare the voters list afresh from the subscription list and from identifying the voters streetwise.

7.The learned counsel would further submit that if the cut off date were to be fixed at the year 2010, it would not be a fair election since there were several persons, who could have passed away and whose family members could be the members of the third respondent Jamath. The learned counsel for the petitioner would further submit that the cut off date for inducting the voters should be the date on which the election notification has been issued.

8.This was strongly opposed by Mr.Ajmal Khan, learned Senior Counsel appearing on behalf of the third respondent. He would submit that the cut off date has to be either the date on which W.P.(MD) No.20474 of 2021 was disposed of ie., on 29.08.2022 or when the management was handed over to the second respondent. He would further submit that the second respondent does not have the power to induct the members, since this is exclusively within the domain of the general body.

9.This statement was refuted by the learned counsel appearing for the petitioner, who would submit that the administrator, who has taken over pursuant to the orders of this Court, would be the Management Committee as envisaged under Section 3(i) of the Waqf Act, 1955, having the power to induct the new members.

10.Mr.D.S.Haroon Rasheed learned Standing Counsel for the respondents would further submit that they are ready to abide by the directions of this Court. The Superintendent had also submitted that the Election Officer nominated by the second respondent had also submitted a report, wherein it is stated that he has

received a list of 141 members from the writ petitioner. But however, the list, which has been provided by the third respondent, who has now been impleaded, contains 195 members. That apart, there are 15 members, whose request for membership has been rejected by the erstwhile office bearers.

11.Heard the learned counsels appearing on either side.

12.Admittedly, all the parties are interested in conducting the election. It is only with reference to the cut off date that there is a dispute. The election notification notifying only the voters list up to the date 2010 cannot be countenanced for the simple reason that in the last 13 years, many of the voters in the list of 2010 could have expired/turned major etc., Therefore, the members have to be deleted and added even in the list of 2010. The newly impleaded respondent, namely the third respondent, had continued in management even after the expiry of the period, which was the bone of contention between the parties and ultimately, they have under the order of this Court handed over the management to the second respondent. They have also produced the list of about 195 members, apart from a list of 141 members, which has been handed over by

the writ petitioner. The report filed by the Election Officer would indicate that 15 members, who have tendered their subscription, have also been turned down by the erstwhile persons in management. Further, Section 3(i) of the Act defines as Mutawalli as follows:-

“(i) “mutawalli” means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any wakf or wakf property: Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office bearer of such committee or corporation;”

13. Therefore, the second respondent steps into the shoes of a Mutawalli by reason of the above. He has not only been appointed by a competent authority but also clothed with the power to manage and administer the Waqf. Therefore, he is qualified to induct new members.

14. Therefore, in order to have an inclusive election, the Writ Petition is disposed of with the following directions:-

i) The second respondent and the Election Officer are directed to consider the list submitted by the petitioner, the third respondent as well as the 15 members, who have not been inducted;

ii) The learned Senior Counsel for the respondent Waqf had submitted that the last entry of the member was on 22.02.2023 of one Sirajitheen under receipt No.0089. No other voters shall be permitted to be included in the voters list and the voters list would be frozen with the name of Sirajitheen.

iii) The Election Officer shall scrutinize the voters list to verify whether they are the members of the above Jamath and whether the subscriptions have been duly paid and is otherwise in order;

iv) The cut off date shall be 06.03.2023, the date on which the second respondent had set in motion the election process. Therefore, the second respondent shall settle the members from out of aforesaid 3 lists, who have paid/considered their subscription prior to 06.03.2023;

v) The Voters list will be published on 10.04.2023;

- vi) Objections to the voters list shall be submitted on or before 21.04.2023;
- vii) The objections shall be considered by 26.04.2023;
- viii) Final voters list to be published on 26.04.2023;
- ix) Nominations for the proof of the Committee members shall be submitted by 02.05.2023;
- x) Objections, if any, to the nominations shall be received up to 04.05.2023;
- xi) The list of candidates after submitting the objections shall be put up/published by the end of 04.05.2023;
- xii) Elections will be held on 19.05.2023;

However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking	: Yes / No
NCC	: Yes / No
Internet	: Yes / No
Index	: Yes / No

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