



W.P.(MD) No.30305 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

**W.P.(MD) No.30305 of 2024
and
W.M.P.(MD) Nos.25490 and 25491 of 2024**

Kamaraljaman

... Petitioner

/vs./

- 1.The Tamil Nadu Waqf Board,
rep by its Chairman,
Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai 01.
- 2.The Chief Executive Officer,
Tamil Nadu Waqf Board,
Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai 01.
- 3.The Superintendent of Waqf,
O/o. the Superintendent of Waqf,
Ramanathapuram Region,
No.176/11, 1st Floor, Therpasayanam Road,
Vellipattinam,
Ramanathapuram.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for records relating to the impugned election notification issued by the 3rd respondent in Na.Ka.Gs.No. 285/V.K/Tha.Aa/Rama/2024 dated 28.11.2024 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff

For Respondents : Mr.D.S.Haroon Rasheed
Standing Counsel

ORDER

The instant writ petition has been filed challenging the election notification issued by the third respondent for conducting an election to the Mohideen Aandavar Jumha Pallivasal, Mohamadieyar Pattinam Jummah Pallivasal and Gandhiroad AL Noor Jummah Pallivasal.

2. A strong reliance had been placed by the learned counsel for the petitioner by way of the judgment of this Court in the case of *Mohammed Yusuf Vs. Tamil Nadu Wakf Board, rep by its Chief Executive Officer, Tirunelveli* reported in **2023 (3) CWC 143**. Referring to the said judgment, the learned counsel for the petitioner would submit that the respondents do not have any



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authority for conducting the election of a Wakf. Therefore, he would pray this Court to set aside the notification impugned herein.

3. On the contrary, the learned Standing Counsel appearing for the respondents would submit that the elections had been notified pursuant to the orders passed by this Court in W.P.(MD) No.4438 of 2024 dated 27.02.2024 and in Cont.P.(MD) No.2892 of 2024 in W.P.(MD) No.4438 of 2024 dated 02.12.2024. Therefore, he would submit that the election notification issued by the third respondent cannot be said to be bad in law.

4. I have considered the rival submissions made by the learned counsel on either side.

5. The learned single Judge of this Court in ***Mohammed Yusuf Vs. Tamil Nadu Wakf Board, rep by its Chief Executive Officer, Tirunelveli*** reported in ***2023 (3) CWC 143*** had in clear terms held that the Chief Executive Officer or the Wakf Board is not conferred with the authority/power to conduct the election or to change the mode of election as set out in the Wakf deed/proforma or custom



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followed in appointing the Mutawallli nor is it open to the Board/CEO to direct the Superintendent to conduct elections nor can the appointment of Mutawalli be declared bad due to the absence of the Officials of the Board. He had also indicated that the respondent Board can initiate action under Sections 65 and 69 or any other provisions of the Wakf Act, 1995, if circumstances so exist warranting exercise of such power. For better appreciation, relevant paragraph is extracted herein below:-

“17. I shall now proceed to examine the duties, powers of Chief Executive Officer to see if power/authority is conferred with the Chief Executive Officer to conduct elections to individual Wakfs.

A. Duties and powers of Chief Executive Officer - [Section 25](#) and its Scope:

"(1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include,

(a) investigating the nature and extent of Wakf and Wakf properties and calling whenever necessary, an inventory of Wakf properties and calling, from time to time, for accounts, returns and



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information from mutawallis;

(b) inspecting or causing inspection of Wakf properties and accounts, records, deeds or documents relating thereto;

(c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of Wakf.

(2) In exercising the powers of giving directions under sub-section (1) in respect of any Wakf the Board shall act in conformity with the directions by the Wakf in the deed of the Wakf the purpose of Wakf and such usage and customs of the Wakf as are sanctioned by the school of Muslim law to which the Wakf belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

The Chief Executive Officer (CEO) is the Ex-Officio Secretary of the Board and functions under the Administrative Control of the Board in terms of [Section 23 \(3\)](#) of the Act. The CEO is conferred with the authority/power to investigate the nature and extent of Wakf properties, call for an inventory of Wakf properties and accounts,



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returns and information from mutawallis. The CEO is also conferred with the power to inspect or cause inspection of the Wakf properties, accounts, records, deeds or documents relating thereto. The CEO has generally to do all such acts as may be necessary for the proper control, maintenance and superintendence of Wakfs. In exercising these powers the Chief Executive Officer and the Board shall act in accordance with the directions of the Founder, the purpose of the Wakf and custom and usage of the particular school to which the Wakf belongs. There is no provision brought to my notice enabling the CEO to conduct elections to the individual Wakfs. Reliance on [Section 25\(1\)\(c\)](#) of the Act which provides that the functions of the Wakf would include doing generally of such acts as may be necessary for the control, maintenance and superintendence of Wakf, would not take within its ambit the power to conduct elections in the absence of any express provision conferring power to conduct election by the CEO.

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20. In the light of the discussion, there is no doubt in my mind that neither the Wakf Board nor the CEO is conferred with the



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authority/power to conduct election or to change the mode of election as set-out in the Wakf Deed/Proforma or Custom followed in appointing the Mutawalli nor is it open to the Board/ CEO to direct Superintendent to conduct elections nor can the appointment of Mutawalli be declared bad only on the premise that the same was not made in the presence of the officials of the Board. This would not preclude the Respondent Board from initiating action under [Sections 65, 69](#) of the Act or any other provisions of the [Wakf Act](#), if circumstances so exist warranting exercise of such power.”

6. The only contention that had been raised by the respondents is that it was pursuant to the directions issued by this Court to conduct the election. A perusal of the order made in W.P.(MD) No.4438 of 2024 dated 27.02.2024 would indicate that when the writ petition was taken up for hearing on the said day, a statement had been made by the learned Standing Counsel appearing for the Wakf Board that steps have been taken for conducting the elections and the elections would be conducted immediately after the Ramzan festival. Similarly the order made in Cont.P.(MD) No.2892 of 2024 in W.P.(MD) No.4438 of 2024 dated 02.12.2024



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records the statement of the learned Standing Counsel appearing for the Wakf Board that the election notification had already been issued in that aspect and the elections are to be conducted on 29.12.2024. There has been no positive direction by the learned Judge to the Wakf Board to conduct the elections.

7. Surprising to note that the order of the learned single Judge reported in in **2023 (3) CWC 143** had not been placed before the learned single Judge, who had recorded the statements of the counsel of the Wakf Board and permitted the elections. Since this Court had already held that neither the CEO nor the Wakf Board do not have any authority to conduct the elections or to direct the Superintendent of Wakf to conduct elections, the election notification issued by the third respondent can only be held to be made without any authority of law.

8. For the aforesaid reasons, the Writ Petition stands allowed and the impugned election notification dated 28.11.2024 is set aside. Considering the fact that the term of Office of the Administrators had expired and it is the time that new Office Bearers have to be appointed, this Court appoints Mr.S.Anwar Sameem, (Enrol.No.2824/2008, Mobile No.98944 98078), Chamber No.37,



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Madurai Bench of Madras High Court Building, Madurai, as Advocate Commissioner to monitor that the elections are being conducted in a fair and proper manner. The Advocate Commissioner would be entitled to a sum of Rs. 50,000/- as remuneration by the Waqf. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU, J.

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