

03.03.2025
Item No.11
RP/KC
Ct. No.01

MAT 1105 of 2024

**The Board of WAKF (SIC AUQAF) West Bengal & Anr.
VS.**

Syed Irfan Ali & Anr.

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IA No.CAN 1 of 2024

Sk. Md. Galib, Sr. Adv.
Mr. Abu Siddique Mallik
....For Appellants

Mr. Md. T.M. Siddiqui, Sr. Adv.
Mr. Farooque Ali
Mr. Afsar Ali
....For Respondent No.1

1. Certified copy of the impugned order filed in Court today
be kept on record.
2. This intra-Court appeal is directed against the order
dated 21st May, 2024 passed in WPA No.13765 of 2024.
The said writ petition was filed by the respondent no.1
herein praying for issuance of writ of mandamus to set
aside the order dated 29th February, 2024 passed by the
second appellant holding that when the question of
Indian Nationality of Syed Irfan Ali the mutawalli is
involved and also considering the fact that for want of
proper administration and management, a valuable
waqf estate is being hampered and after due
deliberation and discussion the Board of Auqaf resolved
that the name of Syed Irfan Ali, the writ petitioner, be

expunged from the post of mutawalli in respect of Syed Maslehuddin Waqf estate.

3. On going through the writ petition, more particularly, the grounds, we find that the case of the writ petitioner was that the order dated 29th February, 2024 was passed without providing him any opportunity of hearing. Further, it was contended that the Board of Auqaf has failed to effect any service of notice of hearing on the petitioner herein. Therefore, the order passed was in violation of principles of natural justice.

4. In the writ petition the writ petitioner did not seek to challenge the amended definition of mutawalli whereby the second proviso was inserted by the Act of 2013 which provided further that a mutawalli shall be a citizen of India and fulfill such other qualification as may be prescribed. The Board of Auqaf has held that by operation of law the writ petitioner cannot continue as a mutawalli as admittedly the writ petitioner is a British National. Thus, the learned writ Court had no occasion to examine the effect of the amended definition of Mutawalli as defined in Section 3(i) of the Act after it was amended with effect from 1.11.2013. In other words, there was no direction sought for in the writ petition either to declare the amendment as ultravires or to challenge the amendment to be prospective and not retrospective. Therefore, we are of the view that the

observations and findings rendered by the learned writ Court was beyond the scope of the writ petition and have to be necessarily eschewed. We say so because the Court at the first instance was not called upon to decide as to the effect of the amendment. All that the writ petitioner contended that the order impugned passed by the Board of Auqaf was in violation of the principle of natural justice. Apart from that the observations/findings rendered in the impugned order may have a far-reaching consequence and such finding could not have been recorded without any affidavit-in-opposition being filed. In the instant case no affidavit-in-opposition had been filed and no prayer sought for in the writ petition to declare the statutory amendment as invalid or ultra vires. Thus, the only question, which fell for consideration before the learned writ Court, was whether the Board of Auqaf, West Bengal afforded a reasonable opportunity to the petitioner. On going through the order impugned in the writ petition dated 29th February, 2024 we find that the matter was adjourned twice at the instance of the writ petitioner and it appears that a notice was sent fixing hearing on February 29, 2024 to the address given by the writ petitioner/mutawalli and the envelope returned with the endorsement “no such person in this address”. Learned senior advocate appearing for the writ petitioner submitted that in the letter dated September 9, 2023

the address of the writ petitioner was given as 26/1, Market Street, Kolkata-700087 to which the notice of hearing fixed on 29th February, 2024 was sent. Further, it is the case of the writ petitioner that there was another letter which was sent to the Chief Executive Officer, Board of Auqaf intimating the change of address as well as change in the email address which has been annexed in the stay petition filed along with this appeal and notice was not sent to the new address which was notified. Admittedly, the writ petitioner had responded to two earlier notices and though he did not appear personally he authorized Mr. Farooque Ali, learned Advocate who appeared in the hearing on November 23, 2023. Thereafter, the next hearing was fixed on 20th February, 2024 and notice sent to the address has returned with postal endorsement “no such person in this address”. Thus, we are of the view that the writ petitioner should be given an adequate opportunity, more particularly, when he appeared through his authorized representative in the hearing held on 23rd November, 2023. Therefore, on this ground alone we are inclined to interfere with the order passed by the Board of Auqaf dated 29th February, 2024. Accordingly, the appeal and the connected application are allowed and the findings and observations rendered by the learned Single Bench touching upon the fact of amendment to the Waqf Act 1995 by the Act of 2013

with effect from 1st November, 2013 qua insertion of the second proviso to Section 3(i) are set aside. As we have found there has been violation of principles of natural justice the order passed by the Board of Auqaf, West Bengal is set aside and the matter is remanded to the Board of Auqaf for fresh consideration. The writ petitioner is directed to appear in person or through his authorized representative before the Board of Auqaf and submit a letter clearly mentioning the correct address and email ID. On the said date the Chief Executive Officer shall fix a date for hearing and the writ petitioner shall appear and place his submission before the Board of Auqaf, West Bengal which shall be considered on merits and in accordance with law. We make it clear that all other observations made by the learned Single Bench upon the validity of the amendment being prospective or retrospective and all other legal and factual issues are left open.

5. We further make it clear that it will be well open to the writ petitioner to raise all issues as regards validity of the amendment etc. before the Board of Auqaf.
6. The appeal and the connected application are disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)