

27.11.2025
Ct. No.24
Sl. No.20
akd

W. P. A. 29849 of 2024

[Syed Md. Shabbar -Vs- The State of West Bengal & Ors.]

Mr. Shamit Sanyal
Ms. Priyakshi Banerjee
... ... for the petitioner

Mr. Nadeem Sulaiman
... ... for respondent nos.2 & 3
[Board of Auqaf]

Sk. Md. Galib .. Sr. Govt. Advocate
Mr. Abu Siddique Mallick
... ... for the State

1. The petitioner is an intending *Mutawalli*, having applied for the said post, pursuant to an advertisement. The petitioner challenges the resolution dated 21.12.2023, which was signed on 23.10.2024. The principal grievance of the petitioner is that the resolution dated 21.12.2023 had not been signed by the then Chairperson of the Board of Auqaf, West Bengal (hereinafter '*the Board*'). The same was signed subsequently on 23.10.2024 by the present Chairperson of the Board.
2. Mr. Nadeem Sulaiman, learned counsel appearing for the Board of Auqaf and Mr. Sk. Md. Galib, learned senior Government Advocate appearing for the State-respondents make their submissions.
3. The point taken at the threshold by both Mr. Sulaiman and Mr. Galib is the issue of maintainability, since it is their contention that the Unified Waqf Management Empowerment, Efficiency and Development Act, 1995 (as amended by the Act of 2025) (hereinafter '*the said Act*'), specifically bars the

jurisdiction of other courts and Tribunals, as specified in Section 83(2) of the said Act. The said provision reads as under :-

“83. Constitution of Tribunals, etc. – (1) ***
 (2) *Any mutawalli person interested in a waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf. [Provided that if there is no Tribunal or the Tribunal is not functioning, any aggrieved person may appeal to the High Court directly.]”*

4. It is their contention that two categories of persons are entitled to challenge the acts of commission and/or omission as well as orders made under this Act, only before the Tribunal. Amongst these two categories of persons, the first being a *mutawalli* person interested in Auqaf and the second being any other person, the petitioner falls within the second category as ‘*any other person*’. Thus, the petitioner is liable to proceed with his grievance and seek redressal of the same before the Tribunal.

5. Mr. Galib has referred to a decision of the Hon’ble Supreme Court of India in the case of *Board of Wakf, West Bengal & Anr. vs. Anis Fatma Begum & Anr.* reported in (2010) 14 SCC 588 and two decisions of this Hon’ble Court, the first decision is of the Division Bench in the case of *Board of Wakf & Anr. vs. Anis Fatima Begum & Ors.* reported in 2022 SCC OnLine Cal 3345 and an unreported decision by a coordinate Bench of this Court in W.P. No. 21341(W) of 2019 [*Sahebzada Md. Shahid Alam alias S.M. Shahid Alam vs. The State of West Bengal & Ors.*].

6. The consistent view in the three decisions is that the Tribunal has an all encompassing jurisdiction to deal with matters pertaining to the Auqaf to the exclusion of civil court’s as

well as the High Court exercising jurisdiction under Article 226 of the Constitution of India.

7. It may be noted that the decision of the Hon'ble Supreme Court of India further clarified that a party can approach the Auqaf Tribunal even if no order has been passed under the Act but an act of commission and/or omission of the Board, by which the person is aggrieved.

8. Mr. Shamit Sanyal, learned counsel appears for the petitioner and submits that there is no order passed by the Board by which the petitioner is aggrieved or which he can carry to the Auqaf Tribunal. He further submits that the petitioner is aggrieved by the acts of commission and/or omission of the Board in signing the resolution adopted earlier, without any application of mind, as the resolution records that the same was put up before the present Chairperson merely as an administrative order.

9. The second limb of his submission is that Sections 5 and 6 of the said Act carve out an exception to Section 83 and hence, Section 83(2) of the said Act would not be an impediment as to the maintainability of this petition before this Hon'ble Court.

10. I have heard the learned counsel for the respective parties and perused the records.

11. The following issues are fairly clear and admitted :-

- (i) The petitioner's *locus standi* as a person aggrieved to bring forth an application to any judicial or quasi-judicial body;
- (ii) That there is a dispute between the parties, which has arisen due to the acts of commission and/or omission of the Board;

- (iii) The petitioner's grievance is in respect of an act of the Board, for which he seeks redressal;
- (iv) There is no order, which can be carried to the Auqaf Tribunal.

12. On these admitted facts and issues, the only hurdle is whether the grievance of the petitioner, can be addressed in this particular writ petition. The petitioner's grievance emanates from an act of the Board and even though not specified under Section 83(2), the Hon'ble Supreme Court has in no uncertain terms clarified that even if there is no order, but the petitioner is aggrieved by such an act of the Board, his grievance may be carried to the Tribunal for redressal.

13. In so far as the exception carved out under Sections 6 and 7 of the said Act was argued on behalf of the petitioner, the same is belied by the decision of the Hon'ble Supreme Court in the case of *Rashid Wali Beg vs. Farid Pindari & Ors.* reported in (2022) 4 SCC 414. In the said decision, the Hon'ble Supreme Court has in no uncertain terms clarified that the purport of Sections 6 and 7 of the said Act are restricted and confined only to what is included in the list of Auqafs prepared under Section 4 and published under Section 5.

14. In the present case, the petitioner does not make any submissions in so far as Sections 4 and 5 or inclusions therein are concerned as the same are not covered in the facts and circumstances of the present case.

15. In these circumstances, as afore-stated, it is clear that the petitioner has an alternative and equally efficacious remedy, which lies before the Auqaf Tribunal, on account whereof I am not inclined to entertain the instant writ petition.

16. Accordingly, the writ petition being WPA 29849 of 2024 stands dismissed as not maintainable.

17. The petitioner will be at liberty to approach the Tribunal on the selfsame cause of action, if so advised.

18. There shall be no order as to costs.

19. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Reetobroto Kumar Mitra, J.)