

**HIGH COURT FOR THE STATE OF TELANGANA : HYDERABAD**

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**W.P.No. 15137 of 2022**

Between:

Nawab Syed Mohammed Ali Khan

.... PETITIONER

And

State of Telangana Rep. by its Secretary to  
Minority Welfare Department, Govt. of Telangana,  
Secretariate, Hyderabad & three others.  
and three others.

.... RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **11.07.2022**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE T. VINOD KUMAR**

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|----------------------------------------------------------------------------------|-------|
| 1. Whether Reporters of Local newspapers<br>may be allowed to see the Judgments? | -No-  |
| 2. Whether the copies of judgment may be marked<br>to Law Reporters/Journals     | -Yes- |
| 3. Whether Their Ladyship/Lordship wish to see<br>the fair copy of the Judgment? | -No-  |

**\* THE HON'BLE SRI JUSTICE T. VINOD KUMAR**

**+ W.P.No. 15137 of 2022**

% 11<sup>th</sup> July, 2022.

**W.P.No. 15137 of 2022**

# Nawab Syed Mohammed Ali Khan

...PETITIONER

VS.

\$ State of Telangana Rep. by its Secretary to  
Minority Welfare Department, Govt. of Telangana,  
Secretariate, Hyderabad & three others.  
and three others.

.. RESPONDENTS

! Counsel for the Petitioner

: Sri A.M.Qureshi, Sr. Counsel  
for Sri Maniklal Yadav.

^ Counsel for the Respondent No.1

: Govt. Pleader for Minority Welfare

^ Counsel for the respondent No.2 & 3

: Sri D.V.Sitarama Murthy, Sr. Counsel  
for Sri Abu Akram, Standing Counsel

^ Counsel for the Respondent No.4

: S.Ganesh Rao

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> Head Note:

? CITATIONS:

1. 2014(3) ALD 51
2. 1997(2) ALD 79
3. 1997(3) SCC 261
4. Judgment dt.23.11.2019 in Civil Appeal NO.5297 of 2004 = MANU/SC/0970/2010
5. 1998(8) SCC 1
6. 2014(1) SCC 603

**THE HON'BLE SRI JUSTICE T. VINOD KUMAR****W.P.No. 15137 of 2022****ORDER:**

1. This Writ Petition is filed for a Writ of Mandamus to declare the order in proceedings bearing File No.15/H3/J1/1/92/Z/SupplyII, dt.14.03.2022, issued by the 2<sup>nd</sup> respondent as illegal, arbitrary, null, void, and without jurisdiction, and contrary to the provisions under the Wakf Act, 1995(for short 'the Act').

2. Heard Sri A.M.Qureshi, learned Senior Counsel representing Sri Maniklal Yadav, learned counsel for the petitioner, the learned Government Pleader for Minority Welfare appearing for 1<sup>st</sup> respondent, Sri D.V. Sitarama Murthy, learned Senior Counsel representing Sri Abu Akram, learned Standing Counsel appearing for respondents 2 & 3, and Sri S.Ganesh Rao, learned Counsel appearing for 4<sup>th</sup> respondent; and with their consent, the Writ Petition is taken up for hearing and disposal.

3. Petitioner contends that he was appointed as Mutavalli of Wakf Institution, namely Maqbera Abdul Haq situated at

Boats Club, Secunderabad vide proceedings dt.22.11.2013; that by the impugned order dt.14.03.2022 passed by the Chief Executive Officer on behalf of the 2<sup>nd</sup> respondent, he has been removed as Mutavalli; that Section 64 of the Act deals with the manner and method of removal of Mutavalli; that the impugned order removing the petitioner as Mutavalli, is not in accordance with the provisions of Section 64 of the Act r/w Rule 24-A of the A.P. Wakf Rules, 2000(for short 'the Rules'); that no enquiry as contemplated under Section 64 of the Act was conducted before issuing the impugned proceedings; that the impugned order is passed by a person, who has no authority under the Act, and that as a result of non-adherence to the said procedure, there has been violation of principles of natural justice.

4. In support of the above said contentions, Sri A.M.Qureshi, learned Senior counsel has drawn attention of this Court to the judgments in **Zaheer Ahmed Khan v. A.P.**

**State Wakf Board, Hyderabad and others<sup>1</sup> and Mulla Rahim Saheb and Ors. v. A.P. State Wakf Board and Anr.<sup>2</sup>.**

5. Per contra, Sri D.V. Sitarama Murthy, learned Senior Counsel appearing on behalf of respondents 2 & 3 would seek to justify the impugned order and contend that as there is special forum, that has been created under the Act, the petitioner should be relegated to approach the said forum to avail appropriate remedy, and cannot be permitted to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

6. In support of the said contentions, learned Senior Counsel, by drawing the attention of this Court to the judgment of the Hon'ble Apex Court in **L.Chandra Kumar Vs. Union of India & Ors.<sup>3</sup>**, would contend that the 2<sup>nd</sup> respondent invoked the provisions of Section 64 of the Act to remove the petitioner as Mutavalli by issuing the impugned proceedings for acting in contravention of the provisions of the Act, as is evident from the complaint made against the

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<sup>1</sup> 2014(3) ALD 51

<sup>2</sup> 1997(2) ALD 79

<sup>3</sup> 1997(3) SCC 261

petitioner with the police authorities, and the charge sheet filed therein, regarding fabrication of records, which is the basis for the petitioner to be appointed as Mutavalli.

7. The learned Senior Counsel would contend that since a complaint of fabrication of Munthaquab is alleged, on the basis of which petitioner was appointed as Mutavalli in question, the proper course for the petitioner would be to approach the Tribunal to question the impugned order and not by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. Learned Senior Counsel would place reliance on the judgment of the Supreme Court in **Board of Wakf, West Bengal v. Anis Fatma Begum and Ors.**<sup>4</sup>

8. I have noted the contentions of learned counsel appearing for respective parties.

9. The short question that falls for consideration is as to whether the removal of petitioner as Mutavalli by the 2<sup>nd</sup> respondent is in accordance with the procedure prescribed in

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<sup>4</sup> Judgment dt.23.11.2019 in Civil Appeal NO.5297 of 2004 = MANU/SC/0970/2010

Section 64 of the Act or has there been any contravention in adhering to the procedure prescribed there under.

10. The power to remove a Muthavalli is specified under Section 64 of the Act, and it reads as under:

**“Removal of mutawalli.**

- (1) Notwithstanding anything contained in any other law or the deed of <sup>1</sup> [waqf], the Board may remove a mutawalli from his office if such mutawalli--
  - (a) has been convicted more than once of an offence punishable under section 61; or
  - (b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or
  - (c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or
  - (d) is an undischarged insolvent; or
  - (e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or
  - (f) is employed as paid legal practitioner on behalf of, or against, the <sup>1</sup> [waqf]; or
  - (g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or
  - (h) is interested, directly or indirectly, in a subsisting lease in respect of any <sup>1</sup> [waqf] property, or in any contract made with, or any work being done for, the <sup>1</sup> [waqf] or is in arrears in respect of any sum due by him to such <sup>1</sup> waqf; or
  - (i) continuously neglects his duties or commits any misfeasance , malfeasance, misapplication of funds or breach of trust in relation to the <sup>1</sup> [waqf] or in respect of any money or other <sup>1</sup> [waqf] property; or
  - (j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board

under any provision of this Act or rule or order made thereunder;

- (k) misappropriates or fraudulently deals with the property of the <sup>1</sup> [waqf].
- (2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the <sup>1</sup> [waqf] property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.
- (3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.
- (4) .....
- (5) .....
- (6) .....
- (7) .....
- (8) ....."

11. A reading of sub-Section(1) of Section 64 would indicate that it is the Board, which has been vested with power to remove a Mutavalli in the circumstances enumerated in sub-Clauses (a) to (k) thereof.

12. Further, sub-Section (3) of Section 64 specifies that the Board shall not take any action under sub-section (1), unless it had held an inquiry into the matter in the prescribed manner and a decision is taken by a majority of not less than two-thirds of the members of the Board. Insofar as the manner prescribed in sub-Section(3) of Section 64 of the Act is concerned, reference is to be made to Rule 24A of the Rules.

13. A combined reading of Section 64(3) of the Act with Rule 24A of the Rules, would indicate, firstly, that the power to remove a Mutavalli under sub-section (1) of Section 64 of the Act is vested only with the Board, and secondly, even the action by the Board is only after conducting an inquiry. The twin requirement prescribed in Section 64 of the Act in no words would indicate that it is only after putting the party concerned on notice, the Board can take action of removal, thereby adhering to the principles of natural justice.

14. In the facts of the present case, it is evident that the impugned order has been passed by the Chief Executive Officer, who cannot be equated to the level of Board referred to in Section 64 of the Act, which should be constituted in terms of the provisions of Section 14 of the Act.

15. Since language of Section 64 specifically uses the word 'Board', the Chief Executive Officer, who is the signatory to the impugned proceeding, cannot be considered as replacing or discharging the functions of the Board, and thus it has to be held that the impugned order passed by the Chief Executive Officer would be a nullity as has been held by this

Court in **Zaheer Ahmed Khan's** case( 1 supra), wherein it was observed as under:

“46. Under Section 64 of the Act only the Board is empowered to remove a Muthavalli from his office provided that he is found guilty of one of the enumerated misconducts in sub-section (1) of Section 64. There is no power conferred on the Chief Executive Officer by the Act to impose any order of punishment including the punishment of removal. The Counsel for the 1<sup>st</sup> respondent-Board has not been able to place any proceeding/provision of law before this Court in support of his plea that the Chief Executive Officer of the Board was empowered to impose any punishment on a Muthavalli and that exercising such a power, the petitioner was removed by the Chief Executive officer of the Board in the order dated 19.02.2005. Therefore, the said order of the Chief Executive Officer of the Board has to be held as one passed without jurisdiction and as such a nullity. Therefore, this point is answered in favour of the petitioner and against the 1<sup>st</sup> respondent.

16. Further, this Court speaking through Sri Justice B.Sudershan Reddy (as His Lordship then was), also dealt with removal of Muthavalli without making an inquiry in **Mulla Rahim Saheb's** case (2 supra) wherein it was observed as under:

“6. It is required to notice that Section 64 of the Act gives power to the Board to remove a Muthawalli from his office for the reasons enumerated therein. The same provision however, mandates that no action shall be taken by the Board for the removal of a Muthawalli unless it has held an enquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than  $\frac{2}{3}$ <sup>rd</sup> of the members of the Board. Sub-section (3) of Section 64 of the Act, in my considered opinion, is mandatory in nature and the removal of Muthawallies without holding an enquiry into the matter in a prescribed manner is void in law and has to be declared as such. The Board is bound to make an enquiry and for the said

purposes has to issue notice and provide reasonable opportunity to the Muthawalli concerned before he is removed from his office as Muthawalli. In the instant case, no such procedure is followed by the Board and they were bound to follow the said procedure in so far as it relates to the 1<sup>st</sup> petitioner, who is admittedly a hereditary Muthawalli and about which there is no dispute.”

17. Furthermore, the reliance placed by the learned Senior Counsel appearing for the 2<sup>nd</sup> respondent on the judgment in **L.Chandra Kumar**’s case(3 supra) is clearly distinguishable on facts. The said decision dealt with the Tribunals constituted under Article 323A and 323B of the Constitution of India, and not insofar as the Tribunals constituted under the Statutes. In the said decision, it has also not been held that jurisdiction of the High Court, under Article 226 of the Constitution of India, is ousted merely on creation of such Tribunals.

18. In this context, it is necessary to refer to the decision of the Apex Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.**<sup>5</sup> wherein the Apex Court had laid down four tests for the Court to exercise its jurisdiction under Article 226 of the Constitution, even when an alternative remedy is provided. The four tests are:

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<sup>5</sup> 1998(8) SCC 1

- (i) enforcement of fundamental right,
- (ii) failure of principles of natural justice,
- (iii) order wholly without jurisdiction, and
- (iv) vires of the Act is challenged;

19. The said principle has also been reiterated by the Supreme Court in **Commissioner of Income Tax & Ors. v. Chhabil Dass Agarwal**<sup>6</sup>.

20. Thus, when the order passed by the Authority is without jurisdiction and in violation of principles of natural justice, mere existence of alternative remedy would not act as a bar on this Court to exercise jurisdiction under Article 226 of the Constitution of India to set aside the said proceedings.

21. In the light of the above said settled legal position of law, it is not open for the 2<sup>nd</sup> respondent to contend that the impugned order passed by the 2<sup>nd</sup> respondent, acting as a CEO, is valid in the eye of law, subject to ratification by the Board, inasmuch as such power is only conferred on the Board as noted herein above.

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<sup>6</sup> 2014(1) SCC 603

22. In view of the fact that the impugned order passed by the 2<sup>nd</sup> respondent is in contravention of sub-Section (3) of Section 64 of the Act, and more so, without conducting an inquiry resulting in violation of principles of natural justice, in the considered view of this Court, has caused serious prejudice to the petitioner and therefore the said order cannot be sustained on the ground of mere existence of alternative remedy.

23. Accordingly, the Writ Petition is allowed and the impugned order is set aside, leaving it open to the 2<sup>nd</sup> respondent to consider the matter in accordance with the provisions of the Act. No order as to costs.

24. Consequently, miscellaneous petitions pending if any shall stand closed.

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**T. VINOD KUMAR, J**

11<sup>th</sup> July, 2022.

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