

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF JULY
TWO THOUSAND AND FOURTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION Nos.11603, 11741 and 15420 of 2014

WP.Nos.11603 and 11741 of 2014:

BETWEEN

Syed Abid Ali and others.

... PETITIONERS

AND

A.P. State Wakf Board.

...RESPONDENTS

**Counsel for the Petitioners: MR. MOHD. OSMAN SHAHEED
For MR. MOHD ADNAN**

Counsel for the Respondents: MR. FARHAN AZAM KHAN

WP.Nos.15420 of 2014:

BETWEEN

Syed Khaja.

... PETITIONER

AND

A.P. State Wakf Board.

...RESPONDENTS

Counsel for the Petitioner: MRS. R. ANNAPURNA

Counsel for the Respondents: MR. FARHAN AZAM KHAN

The Court made the following:

COMMON ORDER:

WP.Nos.11603 and 11741 of 2014:

These writ petitions are filed by same petitioners against the Andhra Pradesh Wakf Board (for short 'Wakf Board').

While WP.No.11741 of 2014 questions the impugned memo of the Wakf Board vide F.No.342/MBNR/JPD/2011/Z-1II dated 04.04.2014, WP.No.11603 of 2014 challenges the auction notice issued by the Wakf Board vide F.No.27/DJP/MHNR/AUC/2013-14/ZIII dated 11.04.2014.

2. Brief facts, to the extent necessary to appreciate the grievance of the petitioners, are as follows:

(a) Petitioners claim to be legal heirs and successors of one Syed Akram Ali (grand father of petitioner No.1), who was succeeded by his sons Syed Hussain, Jehangir Ali, Syed Rasool and Yakoob Ali. Petitioners claim that Syed Akram Ali was Mutawalli of Dagah Hazrat Jehangir Peer. It is stated that after the death of Syed Akram Ali in 1973, the entire management of the Dargah was taken over by the Wakf Board and the petitioners were appointed as Mujawars on fixed salary of Rs.50/- per month, which was subsequently enhanced to Rs.100/- with effect from 01.08.1985 under proceedings No.R3/282/Rent dated 21.08.1985. Petitioners claim that they have been discharging their duties as Mujawars.

(b) Petitioners place reliance upon a memo of the Wakf Board bearing No.342/MBNR/JPD/2011/Z3 dated 01.03.2012 whereunder seven persons, which include petitioners herein, were permitted to offer their services of Fateha Khani (Recital of Holy Quran), Taveez (a locket usually containing verses from the Quran), Sandal

(a religious paste applied on a grave), Ghilaf of Mazaar (a sacred velvet cloth draped on the grave) and Tabarruk (food offerings).

The said proceedings further stipulate that the specified services, as above, will be offered by the seven persons without affecting the rights of the contractor and without causing monetary loss to the Wakf Board by keeping the hundies etc. in the Dargah Shareef. The said order further recites that all the seven persons shall abide by their affidavits submitted on 22.02.2012 and not to claim any Towlathship of the institution or other benefits except the abovementioned items.

(c) It is not in dispute that various services to be rendered including collection of Hundi etc. are auctioned by the Wakf Board every year and successful contractor undertakes to discharge all services connected with the Dargah Shareef except the five services, mentioned above, which the petitioners were permitted to discharge. Petitioners state that they were prevented from discharging the aforesaid five services in 2012 by the contractor whereupon they approached this Court in WP.No.37052 of 2012. By order of this Court dated 07.11.2013, the said writ petition was disposed on the concession given by the learned counsel for respondent No.2/ contractor/ therein that respondent No.2 will not interfere with activities exclusively permitted to the petitioners in terms of memo dated 01.03.2012, referred to above.

(d) It appears that for the succeeding year, thereafter, i.e. 2013, the Wakf Board issued auction notice calling for tenders vide tender notice dated 03.12.2013 and the offer of Rs.1 crore of one Mohammed Khaled for the year 2013 – 2014 was accepted by the Wakf Board, but, however, as the successful tenderer deposited Rs.51 lakhs, he was permitted to remit the balance amount of Rs.50 lakhs within 120 days from the date of acceptance. Questioning the said action of the Wakf Board WP.No.37216 of 2013 was filed, primarily, contending that as per the tender conditions, the successful tender had to deposit the entire amount on the same day on

which auction is finalized and granting of 120 days for payment of balance amount was violative of condition No.1 in the tender notice. This Court by order dated 28.01.2014 disposed of the writ petition holding that the Wakf Board had no power to vary or modify condition No.1 of the tender conditions and the second respondent having failed to comply with condition No.1 of the tender conditions, he was not entitled to be awarded the contract. Hence, the impugned memo accepting the tender of the second respondent was quashed. It was, however, left open for the Wakf Board to consider framing of appropriate conditions by taking into consideration the ground realities.

(e) On 04.04.2014, the Chief Executive Officer of the Wakf Board issued the impugned memo, which is under challenge in WP.No.11741 of 2014, whereby the earlier memo of the Wakf Board dated 01.03.2012, referred to in the para above, was withdrawn and immediately, thereafter, fresh auction notification dated 11.04.2014 was issued wherein auction relevant to items 7, 8, 11, 15 and 16 stated to have directly affected the petitioners herein as five of the services, which were exclusively permitted to the petitioners, were also part of the said items for auction. Petitioners, therefore, filed WP.No.11741 of 2014 questioning the memo dated 04.04.2014 withdrawing the earlier memo dated 01.03.2012 and WP.No.11603 of 2014 is filed questioning the auction notification, which includes the five items, which the petitioners claim to have a right to discharge the services in that regard.

3. These writ petitions were initially heard and on 22.04.2014, I had passed the following order:

"Heard.

After hearing the learned counsel for the petitioners and the learned Standing Counsel for the Wakf Board, it appears that there is no dispute that under the memo of the Board, dated 01.03.2012, while continuing the petitioners as Mujawars of the Wakf Institution, specific concession with regard to four items, namely, services of Fateha Khani, Taveez Sandal, Ghilaf of Mazaar and food (Tabarruk), was granted to them. This was, further, confirmed in Clarification

Memo dated 26.12.2011.

Under the proceedings dated 04.04.2014, the memo dated 01.03.2012, is revoked and according to the stand taken by the Wakf Board in the counter affidavit, since the said memo dated 01.03.2012 is contrary to the Wakf Act, 1995, it is not necessary to follow the principles of natural justice before withdrawing the said concession from the petitioners.

Prima facie, I find it difficult to accept the said contention because certain rights are granted to the petitioners and they were enforced through these orders, including the orders of this Court in W.P.No.37052 of 2012 dated 04.01.2013 as well as the final order dated 07.11.2013.

In view of that, therefore, the auction of those rights, which the petitioners are entitled to claim, under the impugned revocation proceedings, dated 04.04.2014, *prima facie*, appears unsustainable.

Pending further orders, the auction scheduled to be finalized may be proceeded with, but final decision regarding award of contract shall be done after obtaining leave of this Court. Further, the petitioners shall perform their duties as Mujawars, but without seeking any benefit in terms of the memo dated 04.04.2014.”

Since the pleadings were complete, these matters were ripe for hearing.

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WP.No.15420 of 2014:

5. In the meanwhile, the person, who had quoted the highest bid in the aforesaid auction, filed a separate WP.No.15420 of 2014, wherein he had questioned the inaction of the Wakf Board in finalizing the auction and awarding the contract to the petitioner, who emerged as highest bidder having quoted Rs.1,65,51,000/- This writ petition was directed to be tagged on to WP.Nos.11603 and 11741 of 2014 and accordingly, in view of the urgency expressed in finalizing the tenders, all the three writ petitions are heard finally and reserved for orders on 26.06.2014.

6. Learned counsel for the petitioners in WP.Nos.11603 and 11741 of 2014 contends that in view of the memo dated 01.03.2012, the five services, which the petitioners were permitted to perform, were never put to auction

except for the impugned auction notice herein.

Learned counsel also submits that the present impugned memo dated 04.04.2014 is issued without any notice or enquiry and it deprives the petitioners of the privilege granted to them with regard to the five services. Learned counsel for the petitioners also pointed out that the impugned memo dated 04.04.2014 refers to fraud and misrepresentation attributed on the petitioners over the erstwhile Chairman of the Wakf Board that they were Mujawars of the Dargah and were entitled to perform the said five services as a matter of right.

Thus, the reasons mentioned in the impugned memo dated 04.04.2014 attributing fraud and misrepresentation to the petitioners is also questioned on the ground that there was no notice and no enquiry before coming to such conclusion by the succeeding Chief Executive Officer. A reference also is made to another order of this Court in WP.No.4391 of 2013, which was disposed of on 13.02.2013 concerning similar auction notice, filed by one Shaukat Baig, who sought a Mandamus for consideration of his representation to auction five services, which are not subject matter of the contract.

7. Learned counsel for the petitioners laid great stress on the observations of this Court in WP.No.4391 of 2013 that the Wakf Board and the administration of the Dargah have to take well informed decision as to what part of the activity should be put to auction and what not and that inconsequential or spiritual activities cannot be treated as commercial activities. Learned counsel submits that the present impugned auction notice is in violation of the observations of this Court in the aforesaid writ petition and amounts to putting the religious duties for auction. Learned counsel also relied upon the counter affidavit filed by the Wakf Board in WP.No.37052 of 2012 where the earlier memo dated 01.03.2012 was relied upon and reiterated by asserting that five services exclusively permitted to be performed by the petitioners do not affect the rest of the items, which are

subject matte of the contract. To substantiate the duties of Mujawars, a decision of the Madras High Court in **SYED MOINUDDIN v. TAMIL NADU**

WAKF BOARD [1] is relied upon to contend that Mujawar is included in the definition of Mutawalli under Section 3(f) of the Wakf Act.

8. Learned standing counsel, on the contra, submits that the petitioners were never appointed as Mujawars, though they claim as such. Learned counsel submits that, on the contrary, the petitioners were mere employees of the Wakf Board and reliance is placed on proceedings of the Wakf Board bearing No.282/1978/Rent dated 14.02.1979 where the Wakf Board appointed all the petitioners on a consolidated monthly salary of Rs.50/- on condition that they will not take part in litigation against the Wakf Board and will not claim any rights whatsoever. Learned counsel states that subsequently, on the request of the petitioners, their *ad hoc* payment was enhanced from Rs.50/- to Rs.100/- under proceedings of the Wakf Board dated 21.08.1985 and salaries are being regularly paid in the same manner. Learned counsel, therefore, submits that there was no basis for the Wakf Board to have granted them any privilege as was done by the Chief Executive Officer under his earlier memo dated 01.03.2012. Learned counsel also submitted that the manner in which the petitioners are dealing with the affairs of the Wakf is causing immense loss to the institution affecting the Hundi collection and that they are also obstructing the contractor appointed year after year.

Learned counsel, therefore, submits that the memo dated 01.03.2012 under which the then CEO permitted the petitioners to offer services with regard to five items was with the condition not to cause any monetary loss to the Wakf Board.

9. Learned counsel also placed reliance upon para 9 of the counter affidavit filed by the Wakf Board in WP.No.37052 of 2012 wherein it was mentioned that the contractor gave written complaint dated 24.03.2012 whereupon the Wakf Board issued notice dated 28.03.2012 to petitioner No.1

calling for explanation and to show cause as to why the memo dated 01.03.2012 should not be rescinded because of violation of terms and conditions thereof. Petitioner No.1 submitted explanation to the said notice making allegations against the said contractor. Learned counsel, therefore, submits that taking all these aspects into consideration and keeping in view the further circumstance that the adjudication as to appointment of Mujawars, being pending with the Wakf Board in an enquiry initiated and on finding that the concession to conduct the religious rituals granted to the petitioners under memo dated 01.03.2012 was against the interest of the institution of the Wakf Board, the impugned memo dated 04.04.2014 was issued.

10. Learned counsel has raised specific contention that since no rights accrue to the petitioners, as a matter of right to offer the said five services, there is no violation of principles of natural justice, as they are not hereditary Mujawars appointed but are merely employees of the Wakf Board and hence, the concession given to them was stated to have been withdrawn and as such, withdrawal does not amount to violation of principles of natural justice or the doctrine of legitimate expectation or promissory estoppel as contended.

Learned counsel relied upon a decision of the Supreme Court in **MONNET ISPATH AND ENERGY LTD. v. UNION OF INDIA** [2] particularly, para 188.5, which states as follows:

“**188.5.** The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit.”

11. Learned counsel for the petitioner appearing in WP.No.15420 of 2014 submits that the petitioner participated in the tender and had quoted Rs.1,65,61,000/- . The tender was opened on 22.04.2014 and the petitioner was informed that he is the highest bidder and that he should deposit the

tender amount in three days. The petitioner has been keeping the said amount ready from 23.04.2014 but the tenders were not finalized because of the pendency of these matters.

Learned counsel submits that the petitioner is suffering heavy interest over the amount, which is kept ready from 23.04.2014. Hence, it is imperative to finalize the tender as early as possible.

12. I have considered the aforesaid contentions of the learned counsel appearing for the parties. It is evident from the proceedings of the Wakf Board relied upon by the learned standing counsel dated 14.04.1979 and 21.08.1985, which are already referred to in the paras above, that the request of the petitioners was considered by the Wakf Board vide its resolution No.27/1979 dated 24.01.1979 and they were directed to be appointed as servants of monthly consolidated salary of Rs.50/- per month, which was later enhanced to Rs.100/- per month. The said proceedings also provide that Superintendent of the Dargah, to assign suitable duties to the persons mentioned therein of the Dargah for which they should not object. The said proceedings are not contraverted or challenged by any of the petitioners. It is also not in controversy that no person or persons are appointed as Mujawars of the institution and that an enquiry in respect of appointment of Mujawars is stated to be pending with the Deputy Secretary and a report from the Deputy Secretary is already received by the Wakf Board. However, no final order is passed.

13. The question, therefore, revolves round the legality or otherwise of the initial memo dated 01.03.2012 under which the petitioners were granted exclusive privilege to offer five services, referred to above. The said memo is not only issued by the CEO on 01.03.2012 but it appears to have been reiterated by the Wakf Board expressly as well as by their conduct. The auction notifications of the Wakf Board since 2011-2012 onwards show that rest of the services only are put to auction without affecting the services granted to the petitioners.

14. According to the learned standing counsel, the memo dated 01.03.2012 is not in accordance with the Wakf Act nor is in the interest of Wakf institution inasmuch as the petitioners are commercializing and collecting the money from the devotees for rendering the said five services and on account of the memo aforesaid, neither the Wakf Board nor the contractor has been able to control the activities of the petitioners.

15. The impugned memo, on the contrary, is questioned by the learned counsel for the petitioners on various grounds including that there was no notice and opportunity of hearing before withdrawing the earlier memo dated 01.03.2102. As discussed above, the impugned memo dated 04.04.2014 itself refers to fraud and misrepresentation said to have been practiced on the then Chairman of the Wakf Board by the petitioners and in securing memo dated 01.03.2012.

Reference 1 to 10 cited in the said memo, however, do not show that any notice on any of the aforesaid grounds was made or ever served on the petitioners notifying that the Wakf Board proposed to withdraw the memo dated 01.03.2012. A benefit or privilege in whatever circumstances conferred on the petitioners, therefore, could not have been withdrawn suddenly, in such a manner, without notice and opportunity to them and in my view, the principles of natural justice are, undoubtedly, attracted when the benefit bestowed on the petitioners is sought to be withdrawn. It may be that the memo dated 01.03.2012, conferring the privilege on the petitioners with regard to five services to be rendered at the Dargah, was not justified and was not in the interest of the Wakf Board, but it is also not specifically pleaded or argued as to whether conferring such exclusive benefit on the petitioners was within the powers of the CEO under the Wakf Act. All those aspects, therefore, require due consideration of the Wakf Board but after notice to the petitioners.

16. For instance, the conclusions, as to fraud and misrepresentation said

to have been practiced by the petitioner on the then Chairman, are clearly drawn *ex parte* and it cannot be said that even when such serious findings are recorded against the petitioners, the principles of natural justice was not necessary to be followed, as contended by the learned standing counsel.

17. I am, therefore, of the view that the successor CEO could not have issued the impugned memo dated 04.04.2014 withdrawing the benefit granted to the petitioners under earlier memo of the then CEO dated 01.03.2012 without notice and opportunity to the petitioners and any such decision in conformity with the Wakf Act could have been taken only after notice to the petitioners. All the questions raised by the parties and which emerged during the hearing of the writ petitions are, therefore, kept open for consideration by the Wakf Board.

The impugned memo dated 04.04.2014 is accordingly quashed.

The Wakf Board shall be free to reconsider its decision taken in the impugned memo but subject to fulfillment of principles of natural justice, as mentioned above and thereafter, take an informed and reasoned decision on the facts and circumstances of the case. WP.No.11741 of 2014 is accordingly allowed.

18. Consequently, WP.No.11603 of 2014, which questioned the auction notice dated 11.04.2014 covering five services, referred to above, also is allowed to the extent of deleting the five services i.e. items 7, 8, 11, 15 and 16 from the purview of the impugned auction notice.

19. Consequent upon the orders in WP.Nos.11603 and 11741 of 2014, the writ petition, WP.No.15420 of 2014, filed by the highest bidder, stands disposed of with a liberty to the said highest bidder to participate in the fresh auction and offer fresh bid, if he so desires. The Wakf Board shall, therefore, be at liberty to issue revised auction notice and proceed with the finalization of the auction after considering the bids received on competitive basis.

In the result, WP.Nos.11603 and 11741 of 2014 stand allowed and WP.No.15420 of 2014 stands disposed of. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

July 31, 2014

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[1] AIR 1998 MADRAS 129

[2] (2012) 11 SCC 1