

## Mohd. Rehaan sheikh @APPELLANT@Hash MP Wakf Board

**Court:** Madhya Pradesh High Court (Indore Bench)

**Date of Decision:** Jan. 15, 2025

**Acts Referred:** Constitution of India 1950 " Article 226Waqf Act, 1995 " Section 6(d), 16, 67, 67(6)

**Hon'ble Judges:** Pranay Verma, J

**Bench:** Single Bench

**Advocate:** Ajay Bagadia, Devansh Awal, Sunil Kumar Jain, Jyoti, Dharmendra Singh Patel, Manya, Mishra, Rishi Shrivastava

**Final Decision:** Disposed Off

### Judgement

JUDGMENTTAG-JUDGMENT

Pranay Verma, J

This petition under Article 226 of the Constitution of India has been preferred by the petitioner being aggrieved by the order dated 23.07.2024

[Annexure P/2] passed by the Chief Executive Officer, M.P. Waqf Board, respondent, whereby he has been removed from the Post of President of

District Waqf Committee, Indore.

2. As per the petitioner, he was appointed as the President of District Waqf Committee of District Indore by order dated 31.08.2023 wherein a

committee of fifteen persons was constituted for overseeing the Waqf Board and committees situated at Indore. A complaint was made by one

Mohammad Aslam Khan to the respondent stating that the petitioner has been convicted for offences punishable under the Gambling Act in the year

2003 and 2007 hence is not fit to continue as President of District Waqf Committee. On the basis of the said complaint, the petitioner has been

removed from the Post of President of District Waqf Committee.

3. Learned senior counsel for the petitioner has submitted that no show cause notice was issued to the petitioner prior to passing of the impugned

order. He has not been afforded any opportunity of hearing and his removal is contrary to the principles of natural justice and is also contrary to law.

Before removal of the petitioner, as per section 67 of the Waqf Act, 1995 it was mandatory for a notice to have been issued to him. The complaint

filed against the petitioner was without any basis. Since the impugned order is a stigmatic order it could not have been passed behind the back of

petitioner which hence deserves to be set aside.

4. Reply has been filed by the respondent M.P. Waqf Board. An application bearing I.A. No.7848 of 2024 has been preferred by an intervenor

namely Raees Shah for intervening in the petition. Similar application bearing I.A. No.8380 of 2024 has been preferred by an intervenor Nasir

Mohammad. The original complainant Mohammad Aslam Khan has also preferred an application bearing I.A. No.8581 of 2024 for intervention.

Though the applications for intervention have not formally been allowed by this Court but with the consent of the learned counsel for the petitioner as

well as the respondent, the learned counsel for the intervenors have also been heard.

5. The contention of the learned counsel for the respondent as well as the senior counsel for the intervenors is that the petitioner had got himself

appointed on the post of President of the Waqf Committee though he was not entitled for the same as per the provisions of Waqf Act. He had not

disclosed the record of criminal cases registered against him and on the basis of such mis-representation and/or fraud had secured his appointment. It

is also submitted that the petitioner is a habitual criminal and has been convicted by the criminal Court. The affidavit which had been submitted by him

seeking appointment contained false and incorrect facts. He was obliged to disclose the criminal cases registered against him which he did not do and

instead stated that there is no such criminal case. Since his appointment is on the basis of concealment of material facts, the same has rightly been

terminated. It is also submitted that the provisions of Section 67 of the Waqf Act are not applicable to the facts of the case since they deal with

supersession of management committee and do not deal with removal of any of its member. The petitioner has an alternate remedy of preferring an

appeal before the Waqf Tribunal against the impugned order but has directly approached this Court hence the petition deserves to be dismissed on this

ground alone. It is further submitted that since the petitioner had procured his appointment on the basis of concealing material facts, there was no

requirement of issuing any notice to him or affording any opportunity of hearing since the same was neither desirable nor warranted in the facts of the

case. The petition hence deserves to be dismissed. Reliance has been placed on the decision of the Apex Court in Chairman State Bank of India and

another vs. MJ James (2022) 2 SCC 301 and of this Court in W.P. No. 27216 of 2022 [Shanti and another vs. State of MP and others] decided by

order dated 25.11.2022.

6. I have heard the learned counsel for the parties and have perused the record.

7. Firstly, it would be appropriate to consider the submission of the learned senior counsel for the intervenors that the impugned order has not been

passed under Section 67 of the Waqf Act, hence there was no requirement of issuance of any notice to the petitioner. To appreciate such submission,

Section 67 of the Waqf Act is reproduced below:

Section 67. Supervision and supersession of committee of management.

(1) Whenever the supervision or management of a [waqf] is vested in any committee appointed by the [waqf], then, notwithstanding anything

contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by

the [waqf], whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may

issue from time to time:

Provided further that if the Board is satisfied that any scheme for the management of a 1 [waqf] by a committee is inconsistent with any provision of

this Act or of any rule made thereunder or with the directions of the 1 [waqf], it may, at any time, modify the scheme in such manner as may be

necessary to bring it in conformity with the directions of the 1 [waqf] or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act, and in the deed of the [waqf], the Board may, if it is satisfied, for reasons to be recorded in writing,

that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the [waqf] is being mismanaged and that in the

interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the

[waqf], in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed

action and calling upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why

such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the

mutawalli and all persons having any interest in the [waqf].

(4) Any order made by the Board under sub-section (2) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) xxxxxxxxxx

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2),

remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial

to the interests of the [waqf], and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the

proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days

from the date of service of the order on him, prefer an appeal against such order to the Tribunal and Tribunal may, after giving a reasonable

opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal

in such appeal shall be final.

8. Sub Section (6) of Section 67 provides that the Board may remove any member of the Committee if it is satisfied that such member has abused his

position as such member or had knowingly acted in a manner prejudicial to the interests of the Waqf. Though it is contended that Section 67 is

relatable only to supersession of committee of management of a Waqf during which proceedings a member may be removed and is not relatable to

proceedings only in respect of removal of a member, but when the entire provisions of the Waqf Act are perused it is observed that there is no

separate provision therein for removal of any member of a committee. Sub section (6) of Section 67 is the only provision whereby a member can be

removed even though the same forms part of the provision relating to supervision or supersession of committee of management of Waqf. Since

appointment of petitioner is under the provisions of the Waqf Act, his removal can also be only under the provisions of the Waqf Act and sub Section

(6) of Section 67 is the only provision providing for removal of a member of a committee. It hence has to be necessarily held that removal of the

petitioner is under the provisions of Section 67(6) of the Waqf Act.

9. No doubt in the judgments relied upon by learned senior counsel for the intervenors it has been held that violation of principles of natural justice

must be tested on principle whether observation of that rule was necessary for decision in facts of the case and that until and unless prejudice is

pointed out an order cannot be quashed merely on the ground of violation of principles of natural justice, but the applicability of the aforesaid principle

is to be tested on the anvil of the facts of the present case.

10. In the affidavit dated 12.08.2023 which had been furnished by the petitioner at the time of seeking his appointment, he had stated that cases had

been registered against him most of which have come to an end. He stated that one case is pending against him bearing Case No.83 of 2015.

Thus, it is not the case that he had stated that no criminal case was ever registered or is pending against him. He stated registration of criminal cases

against him and their closure. Though he did not give the details of the cases registered against him and which were pending and the cases in which he

had been convicted and fines were imposed upon him but this aspect has to be examined in the light of requirement of disclosure of information which

was to be made by him at the time of seeking appointment.

11. Section 16 of the Waqf Act prescribes for the disqualification for being appointed, or for continuing, as a member of the Board. The said provision

is as under:

16. Disqualification for being appointed, or for continuing as, a member of the Board. "A person shall be disqualified for being appointed, or for

continuing as, a member of the Board if—

(a) he is not a Muslim and is less than twenty-one years of age;

(b) he is found to be a person of unsound mind;

(c) he is an undischarged insolvent;

(d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in

respect of such offence;

(da) he has been held guilty of encroachment on any waqf property;

(e) he has been on a previous occasion—

(i) removed from his office as a member or as a mutawalli, or

(ii) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.

12. A person is hence disqualified from continuing as a member of the Board if he inter alia has been convicted of an offence involving moral

turpitude. Mere conviction by itself is not sufficient likewise is the fact of registration of a criminal case against him. The disqualification is incurred

only by conviction in an offence and that too an offence involving moral turpitude. The reason that certain criminal cases have been registered against

the petitioner and are pending may by itself not result in his disqualification. Likewise, conviction in certain cases would also not incur such

disqualification unless such conviction was in relation to an offence involving moral turpitude.

13. Though from the record, it appears that there have been certain criminal cases registered against the petitioner, some of which have been disposed

off and some of which may even be pending and he has been convicted in two of them, but then also a categoric finding has to be recorded that he

has been convicted of an offence involving moral turpitude. It is only thereafter that he would incur disqualification for continuing as a member of

Board. No such finding has been recorded in the impugned order which has only stated conviction of the petitioner in two cases which as per the

petitioner are under the Gambling Act wherein fines have been imposed upon him. Mere conviction without anything else would be insufficient to incur

disqualification. The respondent is required to take into consideration all the cases registered against the petitioner from time to time including the

proceedings initiated against him under M.P. Rajya Suraksha Adhiniyam, 1990 and thereafter to record a finding as to whether disqualification has

been incurred by him under Section 6(d) of the Waqf Act.

14. Since the aforesaid would be a fact finding exercise, it is imperative, and not just warranted or desirable, that the petitioner be afforded an

opportunity of hearing so as to convince the respondent that he has not incurred any disqualification under Section 6(d) of the Waqf Act. The facts of

the case are not such where the petitioner would not at all be prejudiced if opportunity of hearing is not given to him. If opportunity is given to him,

then he may very well prove that he has not incurred any specified disqualification. It may also be noticed that proviso to sub Section (6) of Section 67

of the Waqf Act specifically provides that no order for removal of member shall be made unless he has been given a reasonable opportunity of

showing cause against the proposed action. In the judgments relied upon by the learned counsel for the intervenors there was no such provision of

affording opportunity of hearing. However, under the Waqf Act there is a specific provision. If the same has not to be adhered to then there has to be

some clinching material available on record to justify adopting such a course. However, as discussed above, various factual aspects are involved in the

matter necessitating grant of opportunity of hearing to the petitioner. The impugned order passed without affording opportunity of hearing to the

petitioner hence cannot be sustained. Since the same is in violation of the statutory provisions of Waqf Act and the principles of natural justice, the

objection of the respondent and the intervenors as regards availability of alternate remedy to the petitioner to approach the Waqf Tribunal is not

sustainable and is rejected.

15. As a result of the aforesaid discussion, the order dated 23.07.2024 passed by the respondent is hereby set aside. The respondent would however

be at liberty to proceed afresh against the petitioner in accordance with law.

16. The petition is accordingly allowed and disposed off.