

(2009) 01 AHC CK 0032

Allahabad High Court

Case No: Writ Petition No. 606 (M/B) of 2009

Sharafat Ali And Others

APPELLANT

Vs

U.P.Sunni Central Board of Waqf
And Others

RESPONDENT

Date of Decision: Jan. 23, 2009

Acts Referred:

- Waqf Act, 1995 - Section 67(6)

Hon'ble Judges: Pradeep Kant, J and Shabihul Hasnain, J

Final Decision: Allowed

Judgement

1. Heard Sri M.A. Siddiqui, learned counsel for the petitioners, Sri Mohd. Arif Khan, assisted by Sri Mohiuddin Khan, learned counsel for respondents 1 and 2, Sri Arshad Ahsan Siddiqui for respondent No. 3 and Sri Mohammad Aslam Khan, learned counsel appearing for respondent No. 4.
2. With the consent of the parties" counsel, the writ petition is being disposed of finally.
3. The petitioners admittedly were members of the Committee of Management of the Waqf in question. They have challenged the order dated 17.12.2008 passed by the Chairman of the Board respondent No. 2, by which they have been removed from the Committee vide order dated 17.12.2008 and new members have replaced them.
4. The main thrust of the petitioners" counsel is that in view of Section 67(6) of the Waqf Act, the petitioners could not be removed from the Committee without issuing a showcause notice and affording an opportunity of hearing.
5. Sri Mohd. Arif Khan, learned counsel for the petitioners has opposed the petition and submitted that the two notices were issued to the petitioner No. 2. He further submits that the impugned order itself says that notices were issued to the

petitioner No. 2, but he did not turn up; therefore, taking into consideration the complaint made against him, the matter was heard and orders passed.

6. As directed by the Court, the record has been produced by Sri Mohiuddin Khan, learned counsel for the Waqf Board. The record says that two notices were issued to petitioner No. 2. Out of them, one is showcause notice, which is said to have been sent but there is no evidence of its despatch or service upon the petitioner No. 2. The argument of learned respondents' counsel is that notices were sent by UPC, though it is also not clear from the record whether they were actually sent under UPC.

7. It may be taken note of that presumption of service is drawn only if the notices are sent through registered post but no such presumption is drawn for letters said to have been sent under Postal Certificate (UPC). However, even assuming that notices were sent to the petitioner No. 2, there is nothing on record to show that notices were sent to the petitioners No. 1 and 3, and rather it is the admitted case of the respondents that no notice was issued to the petitioners No. 1 and 3. That being so, the order impugned cannot be sustained for the reason that no notices were issued to the petitioners No. 1 and 3 before passing the same.

8. We, therefore, without entering into the merits of the case, quash the impugned order dated 17.12.2008, passed by respondent No. 2 as contained in Annexure 1 to the petition and remit the matter to the Chairman of the Board, respondent No. 2 for deciding it afresh after affording opportunity to parties concerned including the petitioners.

9. Since the petitioners have approached this Court, there is no need to issue fresh notices to them and service of notices on them would be deemed sufficient. They shall appear before the Chairman, respondent No. 2 on February 2, 2009. The Chairman, respondent No. 2 shall afford them due opportunity of hearing and pass a fresh order in accordance with law expeditiously, say within a maximum period of four weeks from the date of presentation of a certified copy of this order before him.

10. With the aforesaid directions, the writ petition is allowed.