

Saleemuddin and Others Vs Baba Quereshi and Others

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Feb. 5, 2015

Acts Referred: Waqf Act, 1995 - Section 109, 18, 27, 32, 32(2)

Citation: (2015) 2 ABR 401 : (2015) 3 ALLMR 123 : (2015) 3 MhLj 681

Hon'ble Judges: A.I.S. Cheema, J.

Bench: Single Bench

Advocate: S.P. Shah, for the Appellant; A.D. Kasliwal, Advocates for the Respondent

Final Decision: Dismissed

Judgement

A.I.S. Cheema, J.

Respondent No. 2 - Chief Executive Officer of Maharashtra State Board of Waqfs passed orders (Annexure F) dated

26th February 2013, acting upon scheme dated 13th August 2012 submitted by Applicants. He accepted scheme for administration and

management of ""Dargah Hazrath Shahnoor Hamvi Reh. and Dargah Hazrat Shamshoddin Saheb Reh. Masjid, Khankha, Samakhana and

Kabrastan, Osmanpura, Aurangabad"" (hereafter referred as ""Dargah"") inter-alia providing for electing Managing Committee every five years. The

order settling such scheme was challenged by Respondent No. 1 Baba Quereshi (hereafter referred as ""Respondent"") before the Maharashtra

Waqf Tribunal in Waqf Appeal No. 5 of 2013. The Respondent prayed to reject the scheme and continue the managing committee which was

earlier created under Section 18 of the Waqf Act, 1985 (hereafter referred as ""Act"") under his chairmanship. The Presiding Officer of Waqf

Tribunal on 28th March 2014, partly allowed the Appeal. The impugned order of the Respondent No. 2 (hereafter referred as ""Chief Executive

Officer) dated 26th February 2013 settling the scheme was set aside. However, the request of the Respondent for renewal of his committee was

also rejected. The present Applicants, who claim to have been elected in view of the scheme, have filed the present Revision Application

challenging the order of the Waqf Tribunal.

2. To understand the controversy, few facts need reference.

The Dargah concerned does not have mutawalli but is directly under the control of the Waqf Board. Since long, Managing Committee was being

appointed under Section 18 of the Act. Last period of two years of committee headed by Respondent was to expire on 4th June 2012.

Respondent Baba Quereshi, President of the said managing committee submitted proposal to Respondent No. 2 Chief Executive Officer for

renewal of the managing committee. The Applicants also submitted proposal under Section 18 of the Act for approval of new managing

committee. Applicant No. 1-Shaikh Saleemuddin proposed himself to be the President of the said new managing committee. Chief Executive

Officer heard both sides in proceeding numbered as MSBW/MISC/F.1-A-96 and by order dated 29th June 2012 (Annexure D) rejected the

applications of both the parties. Clause (2) of the order reads as under:

(2) The parties are directed to submit the scheme for approval. The decision for management of the institution will be taken on the approval of the

scheme.

The Chief Executive Officer further directed the present committee to continue to look after the day to day affairs of the Waqf.

It appears that notice was published in newspaper calling objections regarding constitution of managing committee under Section 69 read with 32

of the Waqf Act. Respondent Baba Quereshi filed objections (Annexure E). The Applicants, however, submitted a scheme in view of the orders

dated 29th June 2012. Chief Executive Officer considered the matter as Case No. 32/275/12 and passed orders dated 26th February 2013

(Annexure F). Vide these orders, after hearing both the sides, the Chief Executive Officer observed that the Waqf concerned was under direct

control and management of the Waqf Board and that the Applicants had submitted scheme while Respondent Baba Quereshi had filed objections.

He observed that there was opposition from the residents of Mohalla and the devotees and so the extension of period sought (by Respondent

Baba Qureshi) could not be accepted and that it was necessary that from the residents of Mohalla and the devotees under the supervision of

District Waqf Officer voters list should be prepared and from amongst them new management committee should be elected. Thus, the order states

that exercising powers under Section 32 of the Act delegated to him by the Waqf Board on 10th June 2011, Chief Executive Officer was passing

the orders. He directed preparing of voters list. It was also directed that management committee should be elected, which shall be under the direct

control of the Waqf Board. The committee shall be for helping the Board in management. He accepted the scheme as per Annexure A attached to

the order.

3. This order Annexure F, of the Chief Executive Officer was challenged before the Waqf Tribunal. The Tribunal framed the following Points and

recorded Findings as mentioned:-

Tribunal recorded reasons in support and set aside Order Annexure F.

4. It has been argued by the learned counsel for the Applicants that the Appeal itself filed before the Tribunal was not maintainable because the

order passed by the Chief Executive Officer was in exercise of powers vested under Section 32 of the Waqf Act and sub-section (3) of Section

32 provides that when the Board has settled any scheme of management under clause (d) of subsection (2), the affected person may institute a suit

in Tribunal. Thus, according to him the Appeal itself was incompetent. The counsel referred to Annexure B, extract of the minutes of the Board of

Waqf dated 10th June 2011 delegating powers of the Board to the Chief Executive Officer under Section 32 of the Act. He submitted that under

the unamended Section 27 of the Waqf Act, Board was competent to delegate such powers to Chief Executive Officer and Chief Executive

Officer had powers to settle the scheme under Section 32(2)(d) of the Act. It has been argued that the said Resolution delegating powers has not

been challenged anywhere and the Tribunal went beyond its jurisdiction to hold that delegation of the powers was not legal. Under Section 32 of

the Waqf Act, general superintendence of all Waqfs is with the Board and at local levels Mutawallis or committees are appointed to manage the

functions of the Waqfs. For the present Dargah, there was no Mutawalli and so the present scheme had to be framed. He submitted that although

in the order dated 26th February 2013 (Annexure F) in the reference Section 69(32) of the Waqf Act has been mentioned, actually this order is

under Section 32 of the Act as the scheme accepted at Annexure A with the order will indicate the same. Thus, according to him the Tribunal

wrongly proceeded on the premise that scheme is under Section 69 of the Act and that there was no delegation of such powers. It is argued that

Tribunal could not have struck down the delegation of the powers which was not prayer in the Appeal.

5. Per contra, the learned counsel for Respondent No. 1 referred to Ground No. (XII) of the Appeal which was filed before the Tribunal to submit

that relying on Judgment of the Hon"ble High Court of Andhra Pradesh in the matter of M.A. Aziz Vs. A.P. State Wakf Board and Another, ,

specific ground had been raised that blanket delegation of powers by the Board cannot be granted. The counsel did not dispute that the present

Dargah is under the direct control of the Waqf Board. Under Section 18 of the Act, from time to time committees were constituted as there is no

Mutawalli. It has been argued that there was no delegation of powers under Section 69 of the Act to the Chief Executive Officer and the scheme

as has been settled, could not have been accepted. It has been submitted that the scheme when perused, clearly shows that it is under what is

contemplated under Section 69 of the Act. Thus under Section 69(3) of the Act, Appeal was maintainable. The counsel submitted that when the

Waqf is directly being controlled by the Board, the question of having managing committee with elections is not contemplated. The argument is that

the Tribunal rightly found that order passed by the Chief Executive Officer was without jurisdiction. Both the parties had applied for constitution of

committee under Section 18 of the Act but the Chief Executive Officer went beyond to get scheme settled which is not required for implementation

of Section 18 of the Act. It has been further submitted that under Section 109 of the Act, no rules have been settled by the Government as to how

such elections would be conducted and how voters list would be prepared. Referring to the Judgment in the matter of M.A. Aziz vs. A.P. State

Wakf Board and another (supra), it is argued that there cannot be blanket delegation of all the powers of the Board in favour of one person. It is

argued that in the present matter more than half the powers of the Board have been delegated, which is not in consonance with the scheme of the

Act. The argument is that Section 32 of the Act is only for general superintendence. The powers to settle scheme for administration are under

Section 69 of the Act. Under Section 32 of the Act it is only the function which is to be performed whereas the powers to frame scheme for

administration are under Section 69 of the Act.

6. The learned counsel for Respondent No. 2 -Chief Executive Officer submitted that it is not the parties but the Board which settled the scheme

and the scheme settled was under Section 32(2)(d) of the Act for management. The Tribunal could not have gone into the issue of delegation of

powers. The elections were held as per the scheme and change report has been accepted. Respondent No. 1 did not take part in the elections and

the change report has not been challenged. Although the Dargah is situated in particular area, the voters list has to be from residents of the area and

devotees who have been coming to the place. According to the counsel, the impugned order of the Tribunal needs to be set aside.

7. In reply, the learned counsel for Applicants submitted that the Chief Executive Officer did not accept the scheme as was proposed by the

Applicants but what was approved by Chief Executive Officer was Annexure A which is part of his order and thus according to counsel the Chief

Executive Officer was competent to approve the scheme under Section 32 of the Act.

8. Point for consideration is:-

Whether the impugned order setting aside the order dated 26th February 2013 of the Chief Executive Officer is illegal or whether it suffers from

material irregularity?

9. There is no dispute regarding the fact that the Dargah is directly under the control of the Waqf Board. It is also not disputed that since long the

Waqf Board had been appointing committees from time to time under Section 18 of the Act for managing the affairs of the Dargah. Section 18 of

the Act reads as under:

18. Committees of the Board.- (1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for

any specified area or areas committees for the supervision of auqafs.

(2) The constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board.

Sub-section (2) of Section 18 of the Act itself makes it clear that the constitution, functions and duties and the terms of office of such committees

shall be such as may be determined by the Board from time to time. Chief Executive Officer in the present matter while passing orders dated 29th

June 2012 (Annexure D) was seized of the matter only in the context of the Section 18 of the Act as the then present committee of Respondent

Baba Quereshi and new management committee proposed by the Applicants, were vying to form committees in the context of Section 18 of the

Act. Chief Executive Officer rejected applications of both the parties and directed to submit scheme without specifying what scheme under what

provisions he was referring to. Scheme accepted by him vide orders dated 26th February 2013 provides for an elected committee and elections

every five years. This is clearly not in consonance with the provisions of Section 18 of the Act which requires the Board itself to establish either

generally or for a particular purpose committees for the supervision of the Waqf. The term of office of the committees can be determined by the

Board from time to time. But here the scheme has been brought about to have committees which will be elected for five years at a time. Thus,

Chief Executive Officer who subsequently purported to act under Section 32, gave up the system of committees to be appointed from time to time

under Section 18 of the Act as was being done in the matter of present Dargah.

10. The order dated 26th February 2013 of the Chief Executive Officer, no doubt mentions that the financial and property matters of the Dargah

would be under the Board and the committee elected will be under direct supervision of the Board. Annexure A of the order dated 26th February

2013 (Annexure F) when perused, shows in clause (3) that the managing committee shall act as managers of the Waqf and Waqf property. Clause

(5) provides for elections every five years. It provides for preparing list of ordinary members of Jamat of area Usmanpura, Aurangabad. The

elected members of the committee will elect office bearers amongst themselves. The qualifications, disqualifications etc. have been provided.

The Chief Executive Officer purported to act under Section 32(2) of the Act. According to Chief Executive Officer, he exercised powers

delegated under Section 32 of the Act for settling the scheme.

If Section 32 is perused, Sub-section (1) refers to the fact that the general superintendence of all the auqafs in a State shall vest in the Board and it

shall be the duty of the Board so to exercise its powers under the Act to ensure that auqafs are properly maintained, controlled and administered.

Sub-section (2) of Section 32 mentions that without prejudice to the generality of the foregoing power, the ""functions of the Board"" shall be as

provided in the sub-section. Sub-section (d) refers ""to settle schemes of management for a waqf"". There is proviso that no such settlement shall be

made without giving the parties affected an opportunity of being heard. Sub-section (3) provides that where the Board has settled any scheme of

management under clause (d) of sub-section (2), any person interested in the Waqf or affected by such settlement of scheme, may institute a suit in

a Tribunal.

11. Now, if Section 69 of the Act is perused, it reads as under:

69. Power of Board to frame scheme for administration of waqf.- (1) Where the Board is satisfied after an enquiry, whether on its own motion or

on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an

order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the mutawalli or others

in the prescribed manner.

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the waqf holding office as such immediately before the

date on which the scheme comes into force:

Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of

the person next in hereditary succession of the mutawalli so removed, as one of the members of the committee appointed for the proper

administration of the waqf.

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

mutawalli and all persons interested in the waqf:

Provided that any persona aggrieved by an order made under this Section may, within sixty days from the date of the order, prefer an appeal to the

Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order:

Provided further that the Tribunal shall have no power to stay the operation of the order made under this Section.

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(5) Pending the framing of the scheme for the proper administration of the waqf, the Board may appoint a suitable person to perform all or any of

the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.

12. Section 70 of the Act provides for inquiry relating to administration of waqf and Section 71 of the Act provides for manner of holding inquiry.

Sub-section (2) of Section 71 provides that for the purposes of any inquiry under the Section, the Board or any person authorized by it, shall have

the same powers as are vested in a Civil Court. If Section 32, where it refers to settling of ""schemes of management"" is juxtaposed with Section

69, the difference can be appreciated. Section 32 refers to general superintendence of all auqafs in sub-section (1) and sub-section (2) mentions

that ""the functions of the Board"" shall be as specified in clauses (a) to (e). These are ""functions"" which are to be performed, which includes a

function to settle ""schemes of management"". The object is obvious that Legislature was referring to requirement to form ""schemes"" for managing

affairs of the Waqf. Looking to the plural, there can be thus multiple schemes to manage different affairs of the Waqf. Reading Section 32 with

Section 69 makes it clear that what Section 69 is providing for is the ""power"" to frame scheme for administration of waqf. Sub-section (1) of

Section 69 makes it clear that the Board may frame a scheme ""for the administration of the waqf"". The very fact that Section 69 provides the

scheme under this Section which can even provide for removal of mutawalli, makes it clear that scheme which is being contemplated under Section

69 is broader scheme for the complete administration of the waqf. This is different from what is provided in Section 32 which deals with settling

schemes for managing the affairs of the waqf. Section 69, 70 and 71 of the Act read together make it clear that the Board can frame scheme for

the complete administration of the waqf which can even provide for removal of mutawalli.

13. Keeping the above provisions in view when the present matter is considered, objections filed by Respondent, Annexure E, shows that in

newspaper there was publication calling objections regarding constitution of managing committee under Section 69 read with Section 32 of the

Act. Even the order of Chief Executive Officer dated 26th February 2013 (Annexure F) referred to Section 69(32) of the Act as the relevant

provision for the Chief Executive Officer to pass the orders and adopted Annexure A. No doubt in the last part of the order, the Chief Executive

Officer claimed that he was exercising powers under Section 32 delegated by the Waqf Board, but it is obvious on the face of record that the

scheme settled cannot be said to be under Section 32 for managing the affairs but it was a scheme under Section 69 which gave the administration

of the Waqf in the hands of the committee to be elected (of course with the caveat that the Board will have the overall control). Thus Appeal filed

could not be faulted with.

14. Even if the Chief Executive Officer wants to rely on the powers delegated, copy of which is at Annexure B, the powers delegated were for

carrying out ""regular functions of Board"" It would be appropriate to reproduce the Resolution No. 5. The wordings are as under:

Resolution No. 5)

It is unanimously resolved that powers of Board under section 18, 32 (except 32(j)) 36, 40, 41, 42, 43, 54, 56, 63, 64, 65, 70, 71 of the Wakf

Act, 1995 are delegated to Chief Executive Officer of Board for carrying out regular functions of Board.

Thus ""regular functions of the Board"" were delegated. Settling a scheme cannot be said to be a regular function of the Board. Again there was no

reference to Section 69 of the Act.

15. For such reasons I agree with the Tribunal that order of the Chief Executive Officer is not maintainable.

16. The Tribunal while dealing with the Appeal, went into the question whether framing of scheme under Section 69 of the Act is provided when

the Waqf is under the direct management of the Board and came to the conclusion that the same is not provided. In view of above discussion, for

deciding the Appeal, the point was not necessary to decide. The question needs to be left for decision in appropriate proceeding. Similarly the

finding of the Tribunal that the delegation of the powers by the Waqf Board (as done vide Annexure B) was not legal, was also a point which was

not necessary for taking decision in the matter. The delegation of powers is provided for in Section 27 of the Waqf Act and if the Waqf Board had

delegated the powers vide Annexure B, as done, it would be a matter for decision in appropriate proceedings challenging the delegation. For such

reasons the findings and reasons of the Tribunal regarding Points 2 and 3 framed by it need to be ignored as they were not necessary for decision

of the Appeal. The Chief Executive Officer purportedly framed the Scheme under Section 32 which scheme in substance was under Section 69 of

the Act for which the Chief Executive Officer had no powers and thus on this ground itself the order of Chief Executive Officer is not maintainable.

For reasons recorded the setting aside of the Order of Chief Executive Officer by Tribunal is maintainable. It cannot be said to be illegal or

suffering from material irregularity.

17. In the result, I pass following order:

ORDER

The Revision Application is rejected with costs.