

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 5353 of 2017

In the matter of :

An application under Article 102(2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of :

Rakib-Ud Doula Chowdhury
..... Petitioner

-Versus-

Administrator of Waqfs, Bangladesh and others.
..... Respondents

Mr. Bivash Chandra Biswas, Advocate with
Ms. Fara Mahmuda, Advocate
.... For the Petitioner

Present:

Mr. Justice Zubayer Rahman Chowdhury
And
Mr. Justice Kazi Ebadoth Hossain

Date of Hearing : 08.11.2023

Date of Judgment : 09.11.2023

Zubayer Rahman Chowdhury, J :

Being aggrieved by the order dated 28.02.1977, issued by respondent no. 2, removing him from the office of the Mutawalli, the petitioner moved this Court and obtained the Rule by filing the instant application under Article 102(2) of the Constitution. At the time of issuance of the Rule, the operation of the impugned order dated

28.02.2017, as evidenced by Annexure I, was stayed for a period of 3 (three) months.

One Makbul Ali Chowdhury, as Waqif, established Waqf-E-Lillah in April, 1913, which was duly registered, bearing Registration No. 431. As per terms of the Waqf deed, the Waqif was to serve as the first Mutawalli during his life time and after his death, his sons would assume the office of the Mutawalli by turn. In this manner, the office of the Mutawalli continued to be managed by the male heirs of the Waqif.

The petitioner Rakib-Ud Doula Chowdhury was appointed as Mutawalli in February 2005 following the death of the incumbent Mutawalli Monir Ahmed Chowdhury, as evident from Memo dated 17.02.2005 (Annexure B). Respondent no. 5, a full brother of the petitioner, filed an application before respondent no. 1 on 14.05.2015 under section 32 (1) of the Waqf Ordinance, 1962 bringing allegations of misappropriation of fund against the petitioner, following which a show cause notice was issued by respondent no. 3 by Memo dated 01.06.2015. The petitioner replied to the said show cause notice on 25.06.2015 denying the allegations brought against him. However, respondent no. 1 directed respondent no. 4 (Waqf Inspector) to conduct an inquiry and submit a report. In pursuance of the aforesaid directive, respondent no. 4 conducted an inquiry and submitted a report. It is to be noted that both the petitioner and respondent no. 5 were present at the time of conducting the inquiry.

Subsequent thereto, respondent no. 5 filed an application before the Waqf Authority on 07.03.2016 praying for withdrawing his complaint

against the petitioner on the ground that the said complaint was filed by him following some misunderstanding, which has since been settled amicably between the parties. Despite the position as aforesaid, respondent no. 2 issued the impugned order, which is now being challenged by the petitioner by filing the instant writ petition.

Mr. Bivash Chandra Biswas, the learned Advocate appears along with Ms. Fara Mahmuda, the learned Advocate in support of the Rule.

It appears that although notices have been duly served upon all the respondents, no one has entered appearance to contest the Rule.

The learned Advocate appearing for the petitioner submits that the process of removal of a Mutawalli from office is laid down in the Waqf Ordinance. He submits that without following the mandatory provisions of law, the impugned order was passed by respondent no. 2 purporting to remove the petitioner from the post of Mutawalli. Referring to Annexure F, Ms. Fara Mahmuda submits that it is evident that the allegation of selling Waqf property without obtaining permission from the Authority relates to the period between 1999 and 2002, when, admittedly, the predecessor of the petitioner was in office. It is only in 2005 that the petitioner assumed the office of the Mutawalli following the death of the previous Mutawall. Therefore, according to Ms. Mahmuda, the petitioner is not involved with the alleged transactions in any manner whatsoever and therefore, he cannot be saddled with the liability and responsibility for selling the Waqf property, which was admittedly done by his predecessor in office.

The learned Advocate further submits that nowhere within the four corner of the said Investigation Report has any recommendation been made for removing of the petitioner from the office of the Mutawalli. It was, opined that the Mutawalli (the present petitioner) should be given one month time to take necessary steps for recovery of the Waqf property that was sold earlier by his predecessor in office, failing which steps may taken against the petitioner in accordance with section 32 of the Waqf Ordinance of 1962. Turning now to the impugned order, being Annexure I to the writ petition, the learned Advocate submits that it is clear that the said order was passed in an arbitrary and malafide manner. She submits that the petitioner was not given any notice prior to issuance of the impugned order nor was he given any opportunity to present his case before the Authority. She submits that despite the categorical finding of the inquiry report that the sale of the Waqf property took place at the time when petitioner was not in office, the impugned order stated that the petitioner is liable for such alleged misdemeanour and, on that ground, he was removed from the office of the Mutawalli invoking the power conferred under section 32(1) of the Ordinance.

The learned Advocate further submits that the application filed by respondent no. 5 before the Waqf Administrators was not supported by any affidavit. Furthermore, the learned Advocate submits forcefully that respondent no. 5 subsequently filed another application seeking to withdraw the complaint filed against the petitioner. However, the Authority paid no heed to the same.

In support of her contention, the learned Advocate has referred to a decision reported in 29 DLR (SC) (1977) 276 (Md. Shaukat Ali Mia vs Administrator of Wakfs and others), where the apex Court observed as under:

“The question, therefore, is whether the Administrator has acted judicially. We have found that before the Administrator there was a petition under section 32, along with an affidavit supporting the petition, an objection by the Mutawalli, and two audit reports of the years 1373 B.S. and 1374 B.S. Both the petition and objection were verified according to the manner laid down by the Civil Procedure Code. There was no petition of reply, to the objection of the Mutawalli. It appears that the objection petition was not supported by an affidavit. Now we are to see whether a judicial decision could be arrived at on these materials. As regards the petition for removal, it may or may not be supported by an affidavit, because the section has not made it incumbent to be so, but before a tribunal is to act judicially, the tribunal must proceed in either of the two ways, first, it is supported by an affidavit, the advance party must be allowed an opportunity to cross examine the deponent of the affidavit. Secondly, if there is no such affidavit accompanying the petition, he must take oral, and or documentary evidence in support of the petition. If the Mutawalli has filed an objection against the petition for his removal, in the like manner must substantiate his objection, either by affidavit or by evidence, and the advers party, in either case must have opportunity to cross examine the deponent, or call evidence in rebutal.”

(per Kemaluddin Hossain, J, as the learned Chief Justice then was)

As noted earlier, the Rule is not being opposed by filing any affidavit-in-opposition. In the absence of any affidavit-in-opposition, the statements made in the writ petition shall be deemed to be true and correct. Moreover, the present case involves an issue which is similar in nature to the issues involved in the decision referred to in 29 DLR (SC) 276, with which we express our total and respectful agreement.

In the result, the Rule is made absolute.

The impugned order dated 22.02.2017, passed by respondent no. 2, as evidenced by Annexure I, is hereby declared to have been passed without lawful authority and to be of no legal effect.

The petitioner shall continue to discharge his function as Mutawalli of Makbul Ali Chowdhury Waqf Estate, in accordance with law.

There will be no order as to cost.

Kazi Ebadoth Hossain, J :

I agree.

Shanti, B.O.