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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PRANAY VERMA
WRIT PETITION No. 4435 of 2021**

Between:-

**INDORE WAKF MAZAAR HAZRAT NAHAR SHAH
WALI SAHAB WAKE MAUJA KHAJRANA,
DISTRICT INDORE THR. ITS PRESIDENT HASI
ARAB ALI PATEL S/O GAFFUR PATEL R/O
KHAJRANA INDORE KHAJRANA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI AMIT KHATRI, ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR.
PRINCIPAL SECRETARY VALLABH BHAWAN
(MADHYA PRADESH)**
2. **MP WAKQ BOARD THROUGH CHIEF
EXECUTIVE OFFICER OFFICE NEAR TAJUL
MASJID BHOPAL (MADHYA PRADESH)**
3. **ADMINISTRATOR MP WAKF BOARD OFFICE
NEAR TAJUL MASJID BHOPAL (MADHYA
PRADESH)**
4. **SIRAJ KHAN, AGED ABOUT 40 YEARS,
OCCUPATION: TEHSILDAR INDORE (MADHYA
PRADESH)**

.....RESPONDENTS

**(BY SHRI RANJEET SEN, GOVERNMENT ADVOCATE FOR
RESPONDENT NO.1,
SHRI A.S. GARG, LEARNED SENIOR COUNSEL ALONG WITH MS.
POORVA MAHAJAN, ADVOCATE FOR RESPONDENTS NO.2 TO 4.)**

.....
Reserved on 11.02.2022

ORDER
(Delivered on 13.05.2022)

By this petition preferred under Article 226 of the Constitution of India,
the petitioner has challenged the orders dated 12.02.2021 (Annexure-P/1 and

Annexure P/5) passed by MP Waqf Board, Bhopal through its Chief Executive Officer whereby the Committee of the petitioner has been superseded and the Tehsildar, Indore has been appointed as the Executive Officer of the petitioner's Committee.

02. As per the petitioner, it is duly registered in the MP Waqf Board bearing registration No.40/387. The Managing Committee of the petitioner Waqf has been appointed for a period of three years on 17.03.2020 to look-after the management and affairs of Waqf Mazaar Hazrat Nahar Shah Wali Sahab Wake Mauja Khajrana, District Indore.

03. As per the petitioner Shri Jameel Khan, Deputy Collector, District Bhopal has been given additional charge of the Post of Chief Executive Officer of MP Waqf Board by the State Government by order dated 28.11.2020. The Waqf Board has been defunct for a considerable period of time and Shri Dilip Kumar Yadav, Additional Collector, District Bhopal has been given additional charge of Administrator of the Waqf Board vide order dated 11.11.2020 by the State Government.

04. The Chief Executive Officer of Board, has issued the impugned order dated 12.02.2021 under Section 67(2) of the Waqf Act, 1995 stating that petitioner's Committee has committed a number of financial irregularities hence show cause notice dated 13.07.2020 was issued to it and upon not finding the reply submitted by it to be satisfactory, the Committee is being superseded in exercise of powers of the Board under Section 67 of the Waqf Act. On 12.02.2021 itself another order under Section 38 of the Waqf Act has been passed exercising powers of the Board by the permission and recommendation of Administrator and Tehsildar, Indore Shri Siraj Khan has been appointed as the Executive Officer of the petitioner Committee.

05. The aforesaid order has been assailed by the petitioner on the ground that the same is in total ignorance to fundamental Rule 49 of the State Government. A person on additional charge cannot perform the duties directly deriving from the Act. The statutory functions are being directly derived from Sections 67 and 38 of the Waqf Act which are functions and statutory powers of the Board constituted under Section 18 of the Act and when the Board is not available the functions and powers cannot be exercised by a person on additional charge, thus the orders passed by respondents No.2 & 3 are nonest and void. An officer not holding the post on substantive basis could not exercise these statutory power. As per Section 18 of the Waqf Act it is the Board and not the officer in-charge who can appoint or supersede a Managing Committee. The relevant provisions of Waqf Board have not been followed in the matter. Reliance has been placed on the decision of the Full Bench of this Court in **Girija Shankar Sukla vs. Sub Divisional Officer, Harda and others [1973 MPLJ, 411]** and on the order dated 28.07.2017 passed in W.P. No.17846 of 2015 [Dr. Gurudatta Tiwari vs. Madhya Pradesh Waqf Board] by the Principal Seat of this Court.

06. The respondents 2 to 4 have contested the petition by filing their reply. The respondent No.1 has adopted the reply filed by them. Learned counsel for respondents 2 to 4 submits that the petitioner has an alternative efficacious remedy under the provisions of Section 67 of the Waqf Act, 1995 hence the present petition is not maintainable. The Management Committee is constituted under the provisions of Section 18 of the Waqf Act and as per Section 67 the same can be superseded and as per Section 27 delegation can be done. Since the Act itself provides for mechanism of delegation of power of the

Board and as such power has been delegated no fault can be found in the impugned orders. The petitioner has challenged the orders only on technical grounds and not on merits which itself shows that the allegations levelled against it are well founded. The judgments relied upon by the petitioner are distinguishable on facts hence petitioner is not entitled for any relief.

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

08. As per Section 18 of the Waqf Act, 1995 the Committees of the Board are appointed by the Board. Under Section 38, the Executive Officer is also to be appointed by the Board. As per Section 67 (2) of the Act, the Committee appointed by the Board can be superseded by the Board. For ready reference the relevant provisions are as under:

"18. Committees of the Board -Â” (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 wakfs.

(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.

38. Powers of Board to appoint Executive Officer - Â”(1) Notwithstanding anything contained in this Act, the Board may, if it is of the opinion that it is necessary so to do in the interests of the wakf, appoint on whole-time or part-time basis or in an honorary capacity, subject to such conditions as may be provided by regulations, an Executive Officer with such supporting staff as it considers necessary for any wakf having a gross annual income of not less than five lakhs rupees:"

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67. Supervision and supersession of committee of management. -Â” (1) Whenever the supervision or management of a wakf is vested in any committee appointed by the wakf, 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 wakf, 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 wakf by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the wakf, 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 wakf 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 wakf, 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 wakf 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 wakf, 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.

09. The contention of the petitioner is that powers under Sections 38 and 67 (2) of the Waqf Act could not have been exercised by the Deputy Collector, District- Bhopal as a Chief Executive Officer of the Board and cannot be exercised by the Additional Collector as an Administrator of the Board since they are only holding additional charge of said posts. The powers could have been exercised only by the Board and not the officer in charge but the same has been done in ignorance to fundamental Rule 49 of the State Government which is as under:

"An officer appointed to perform the current duties of a post can exercise administrative or financial powers vested in the full-fledged incumbent such as are granted by administrative orders, office memorandum and like. he cannot, however exercise statutory powers whether those powers are derived direct from an act of the legislature or rules, regulations or by laws made under any article of the constitution."

10. In the present case, the State Government has exercised powers under Section 99 of the Waqf Act and has superseded the Board and has thereafter appointed an Administrator by order dated 11.11.2020 (Annexure P/4) and Chief Executive Officer by order dated 28.11.2020 (Annexure P/3). The relevant part of Section 99 of Waqf Act being material is as under:

99. Power to supersede Board

(1)

(2) Upon the publication of a notification under sub-section (1) superseding the Board.-

(a)

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct;

11. The order dated 11.11.2020 (Annexure P/4) appointing Shri Dilip Kumar Yadav as Administrator of the Board states that he has been handed over charge additionally; ("प्रभार अतिरिक्त रूप से सौंपा जाता है") Likewise; the order dated 28.11.2020 (Annexure P/3) appointing Shri Jammel Khan as the Chief Executive Officer of the Board states that he has been given additional charge: ("प्रभार अतिरिक्त रूप से सौंपा जाता है ")

12. A perusal of the aforesaid orders leave no room for doubt that the Additional Collector has been given the additional charge of Administrator and

the Deputy Collector has been given the additional charge of Chief Executive Officer. These officers have not been appointed on officiating basis nor with current charge of the posts. They have been appointed with additional charge hence they are certainly entitled to exercise the powers under Clause (b) of Section 99 (2) of the Waqf Act.

13. The contention of the petitioner that a person appointed on additional charge cannot perform such function is not acceptable in view of specific provision conferring such powers i.e. Section 99(2)(b) of the Act. The reliance placed by the petitioner on fundamental Rule 49 is misplaced since Rule 49 is as regards an officer appointed to perform the current duties of a post whereas in the present case the Administrator and Chief Executive Officer have been appointed with additional charge and not only to perform the current duties.

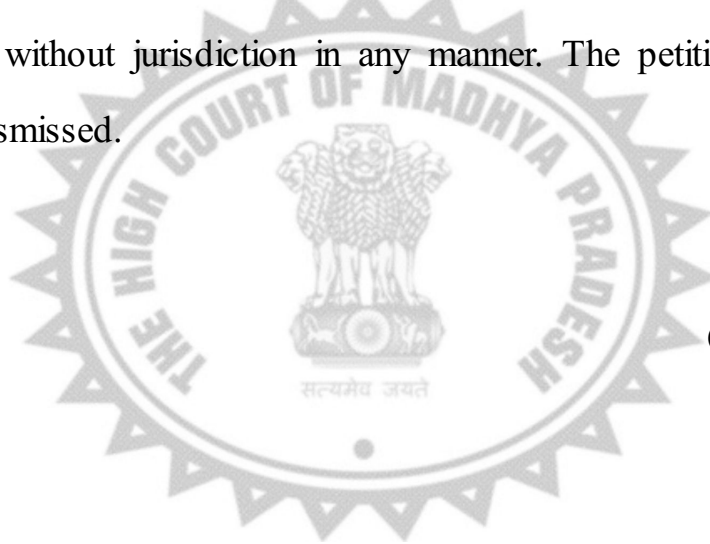
14. The Administrator and Chief Executive Officer as appointed are not on current charge of the duties. They have been appointed under specific provisions of the Waqf Act hence have full competence and authority to exercise the powers under the provisions of the Act. They are empowered to exercise powers substantively in addition to their original charge.

15. In the case of **Girja Shankar Shukla (supra)** relied upon by learned counsel for the petitioner the Sub Divisional Officer was placed in current charge of the duties of the Collector by order of the State Government. In that case, primary question for determination was the distinction between an officer holding a particular post and an officer holding the current charge of the post and between an officer holding a particular post and another officer invested with all that powers attached to that post. It is in that context that the issue raised therein were decided. However, in the present case, the Administrator and the Chief Executive Officer have been appointed with an

additional charge. It is the competency of the officers appointed on additional charge which is under consideration. The judgment in **Girja Shankar Shukla (supra)** thus does not assisted the petitioner in any manner.

16. The order dated 28.07.2017 passed in W.P. No.17846 of 2015 by the Single Bench at Principal Seat of this Court was on the basis of fact of an officer who was holding the post on current charge and not an additional charge hence is not applicable to the present case.

17. Thus in view of the aforesaid discussion, the petitioner has failed to demonstrate that orders dated 12.02.2021 passed by respondents No.2 & 3 are illegal or without jurisdiction in any manner. The petition hence fails and is hereby dismissed.



(PRANAY VERMA)
JUDGE

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