

Mohammad Mustakhan

Vs

U.P. Sunni Central Board of Waqf and Others

Civil Appeal No. 697 of 1981

(P.N. Bhagwati, Baharul Islam JJ)

06.02.1981

ORDER

1. Special leave granted.

2. This appeal by special leave arises out of a proceeding taken by the appellant under Section 63(3) read with Section 71 of the U.P. Muslim Waqfs Act 16 of 1960 challenging an order dated May 7, 1973 passed by the Controller dissolving the Management Committee of the Waqf. There were three contentions raised on behalf of the appellant before us in support of the challenge against the validity of the order of dissolution. One was that the Controller had no power to dissolve the Management Committee because that was a function which could be performed by the Waqf Board alone and the Controller had no power to make such an order. This contention does not appear to be sound since we find that under Section 14, sub-section (2) of the Act, the State Government has, in the circumstances specified in that section, power to appoint a Controller of the Waqf Board and the Controller so appointed is entitled to perform and discharge the functions and duties of the Waqf Board. The learned counsel appearing on behalf of the respondent has produced before us a copy of a notification dated March 22, 1970 issued by the State Government appointing R. Hussan Chisti, a Sunni Muslim, as Controller of Waqf Board. Therefore, there can be no doubt that in the present case the Controller had power to make an order dissolving the Committee of Management. But the order of dissolution suffers from an error of law apparent on the face of the record inasmuch as it does not give any reasons for dissolution of the Committee of Management and the only ground which has been given in the order of dissolution is that the "existing Committee is defect (sic defunct)". This ground does not make any sense at all and it is obvious that the Controller has made the order of dissolution without applying his mind to the relevant considerations which should weigh with him in making such an order. Moreover there are no reasons given by the Controller for dissolving the Committee of Management. It is undoubtedly true that a report was made by the Inspector and on receipt of the report, a show-cause notice was issued to the Committee of Management and a representation was filed by the Committee of Management showing cause against the proposed order of dissolution, but the order of dissolution does not show as to what were the reasons which weighed with the Controller for dissolving the Committee of Management. We should have expected the order of dissolution to discuss the facts and circumstances set out in the report of the Inspector in the light of the cause shown by the Committee of Management and then set out the reasons as to why the order of dissolution should be made.

3. We, therefore, allow the appeal, set aside the orders passed by the District Court as well as the High Court and quash the order of dissolution by the Controller and direct that the Controller or the Board, as the case may be, may, if it thinks fit, decide, after following the principles of natural justice whether the Committee of Management should be dissolved and if the Controller or the

Board decides to dissolve the Committee, then it shall give proper reasons for doing so in the order of dissolution. There will be no order as to costs.

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