

Supreme Court of India

A. Haleem And Others vs M.S. Tajudeen And Others on 12 August, 1994

Equivalent citations: AIR 1995 SC 260, 1994 (4) SCALE 1, 1994 Supp (3) SCC 644, 1994 (2) UJ 661 SC

Bench: M V I., S Mohan

JUDGMENT

1. The appeal relates to selection of trustees to Madrasathul Salalhi Fir Adrahail Kilhai (hereinafter referred to as the Trust). The said Trust was founded in the year 1980. After the death of the founders, disputes arose. A scheme was framed by the Court and the administration of Trust was carried on in accordance with the Scheme Decree modified from time to time. For the administration of the Trust six hereditary trustees are to be selected from three main branches of the founders, two from each branch. Besides, on-hereditary trustees are to be selected by the District Judge of West Thanjavur. In all, there are to be nine trustees. The correctness of the selection ultimately reached this Court. By an order dated 18.9.1991, it was directed that the then trustees could continue upto 31st May, 1992. Thereafter a new set of trustees was to be appointed by proper advertisement in the newspapers inviting applications. If any objection was made to any one of the trustees, the High Court was directed to look into the same. Pursuant to that order of this Court the learned District Judge, West Thanjavur called for applications. By his order dated 25.9.1992 he selected respondents 1 to 6 as hereditary trustees and nominated respondents 7 to 9 as non-hereditary trustees of the Trust. A revision was preferred challenging the selection. The High Court on an elaborate consideration of the matter, by a judgment dated 27.11.1992 found no ground to interfere with the order of the District Judge. Against the said judgment the present special leave petition was filed. On 16.8.1993, this Court passed the following order:

We have heard learned Counsel.

The proceedings before this Court is a special leave petition arising out of the order of the Madras High Court dated 27.11.1992 in C.R.P. No. 2719 of 1992. The proceedings in the High Court, in turn, were directed against the order dated 25th September, 1992 in O.S. No. 6 of 1970 on the file of the District Judge, West Thanjavur in the matter of appointment of trustees to Mathurastul Salahi Fi Adrabil Falahi Trust.

2. In the course of the proceedings in the special leave petition by the order dated 15th April, 1993, this Court re-constituted the Board of Trustees pending disposal of the special leave petition. The nominations of respondents 3, 7 and 8 namely S/Shri A.M. Naina Mohd. Thambi M.M.S. Abdul Wahab and M.A.H. Mohideen respectively were kept out for the time being and respondents 1, 2, 4, 5, 6 and 9 namely S/Shri M.S. Tajudeen, N. Abubacker, Dr. M.S. Mohd. Meeran Saheb along with Justice Khalid, who was requested to be the Chairman of the Board, were nominated on the Board of Trustees.

3. The point to note and emphasise here is that the entire matter of the Constitution of the Board was seized of and binding decision before this Court and no other Court had any jurisdiction of business to interfere with the cause of the matter pending before this Court. In spite of this clear

position, Sri K.S. Abdul Shukoor, Respondent No. 5 in this special leave petition moved - and what is disturbing to us is that the learned District Judge, West Thanjavur entertained - an application, LA No. 135/1993 in O.S. 6/70 before the District Judge for removal of respondent No. 4 herein, A.M. Shamshudeen, Secretary of the Board of Trustees. The said A.M. Shamshudeen was arrayed as respondent No. 3 in the application moved before the District Judge, West Thanjavur. The District Judge, we are constrained to say, did not reflect any thought on the propriety of entertaining the said application and of issuing the notice on the application including to Justice Khalid. Justice Khalid was appointed by this Court as the Chairman of the Board of Trustees for and during the pendency of the proceedings in this Court. He was not a party to any proceedings and was functioning on the directions of this Court But, unfortunately, the District Judge allowed the said Abdul Shukoor to implead Justice V. Khalid as co-nominee party to the application and the learned District Judge took the extraordinary step of issuing notice to Sri Justice Khalid. Justice Khalid was understandably disturbed by this development and has now offered to quit his assignment.

4. The conduct of K.S. Abdul Shukoor, respondent No. 5 herein, in moving the District Court while the proceedings were pending here, amounts to an attempt directly to interfere with the proceedings before this Court, besides being wholly improper. Impleading Justice Khalid as co nomine a party-respondent to the application is again a matter of serious impropriety. This kind of litigious adventurism to thwart the proceedings of this Court and embarrass the Chairman nominated by this Court and an attempt to thwart the functioning of A.M. Shamshudeen who is functioning in terms of the orders of this Court, should be put down. We direct that the proceedings for contempt be initiated against respondent No. 5, K.S. Abdul Shukoor. Notice will go to him directing his personal presence in this Court on 20th September, 1993 to show cause why he should not be punished for contempt of Court.

5. We also direct the learned District Judge, West Thanjavur to submit his explanation why he entertained the application before him and directed notice thereon and, in particular, to Justice Khalid. We see from the application itself that K.S. Abdul Shukoor has referred to the proceedings of this Court. It was the duty of the learned District Judge to ensure that he was not, by allowing parallel proceedings in his court, interfering directly with matters which this Court alone was seized of. We direct the learned District Judge to submit his explanation which should reach this Court before 20th September, 1993. Whether any further action should be initiated against the learned District Judge would be considered after consideration of his explanation.

Copy of the order dated 15th April, 1993 and a copy of the report dated 2nd August, 1993 submitted by Justice Khalid will be sent to the District Judge to enable him to submit a prompt and proper explanation.

6. We also direct that all further proceedings in the application I.A. 135 of 1993 in O.S. 6/70, moved by K.S. Abdul Shukoor before the District Judge, West Thanjavur shall remain stayed. The District Judge shall forthwith upon receipt of this order, delete the name of Justice Khalid in the said application and cause the notice issued to Justice Khalid in these proceedings, to be withdrawn at once.

7. We also direct that until further orders till respondent No. 5 purges himself of contempt, he shall not function on the Board of Trustees.

8. A copy of this order shall be sent to the Registrar of the High Court of Madras to ensure compliance with the directions in para 5 of this order. List on 20th September, 1993.

2. As regards Respondent No. 5 K.S. Abdul Shukoor, by an order dated 20th September, 1993 it was inter alia held thus:

However, on a consideration of the matter, we are left with the impression that the contemner did not act with any innocent motives when he moved the District Judge with his interlocutory application, impleading thereto Justice Khalid and making removal of one of the trustees selected by this Court to act on the Board of Trustees during the pendency of the special leave petition here. In these circumstances, the interference is inescapable that the contemner intended to and did interfere with the course of justice. We accordingly convict him of the offence for the contempt of Court under Section 12 of the Contempt of Courts Act, 1971. So far as the sentence is concerned we think it should serve as a deterrent to like-minded persons, in this case we should, in view of the submissions of Mrs. Kumaramangalam, show some consideration. We sentence the contemner to imprisonment till rising of the Court and impose a fine of Rs. 2,000/-. The fine shall be paid within four weeks from today.

3. On 8.10.1993 this Court directed as follows:

Special leave granted.

However, the matter will be listed after two weeks to consider the acceptability or otherwise of the explanation tendered by the learned District Judge. Except for that, the appeal is disposed of finally.

4. The matter comes up now for acceptance of the explanation of the learned District Judge. In his explanation dated 6.9.1993 he would inter alia say as under:

5. I may be permitted to submit that from the beginning when I initiated the proceedings for the appointment of trustees to the Board, several anonymous petitions and complaints were received against most of the candidates and there was keen competition for the Trusteeship and moreover I beg to submit that since the prayer in the petition was to appoint any one of the other trustees except Mr. A.M. Shamsuddin as Secretary to the College and the application was not filed seeking the removal of 3rd respondent from his trusteeship, I thought that I can hear the petitioner and the other side regarding the maintainability of the application. I also beg to submit and I assure that I did not intend or rather never meant to go on with a parallel proceeding but only with a bonafide impression that I can hear about the maintainability of the application, the application was numbered. I beg to also submit that numbering of the application had been done without going through the names of the respondents in the petition and after the petition was numbered notices were issued to the respondents for their appearance on 3.8.1993 on which date Mr. R. Jayaraman, Advocate filed Vakalat for respondents 1 to 5 and informed this Court that His Lordship Justice V.

Khalid Esq., was arrayed as 6th respondent in the petition. I beg to submit that immediately I asked the Counsel for the petitioner Mr. P. Krishnamoorthy Iyer as to why the Chairman of the Board, who as appointed by the Supreme Court, was arrayed as a party, and he replied that since the Chairman was representing the Board the name of the Chairman was also included in the petition. I, in turn, made myself clear to the Counsel for the petitioner that it is not correct to have added the Chairman of the Board, who is not bound by any proceedings of this Court and the application will be heard in the absence of the Chairman of the Board. Then, the learned Counsel for the respondents 1 to 5 requested time for filing counter and the application was adjourned to 10.8.1993 on which date counter by the 3rd respondent was filed and it was adopted by the 1st respondent and for counter of others the application was posted to 13.8.1993 and on 13.8.1993 counter of 2nd, 4th and 5th respondents were filed, and the application was adjourned to 17.8.1993 for hearing regarding the maintainability of the petition. I beg to further submit that on 17.8.1993 I heard both sides and passed orders on the same day itself, dismissing the application on the grounds that it is not maintainable since S.L.P. No. 16386/92 was pending before the Supreme Court regarding the appointment of trustees of the Board and that the scheme also does not invest the power of selecting the Secretary with this Court and it is for the Trustees to select the Secretary for the Board.

6. I humbly beg to submit that instead of hearing the petitioner regarding the maintainability before numbering the application, the petition was numbered for which I regret very much. I would also further submit that it was unfortunate on my part that a notice had been issued to His Lordship, the Chairman of the Board also which was not done either wantonly or knowingly and I offer my apology for having acted as such though unintentionally. I feel very sorry for having disturbed His Lordship. I submit that in obedience to the orders of the Supreme Court I have today withdrawn the notice issued to His Lordship Justice V. Khalid Esq., the Chairman of the Board and His Lordship's name has been removed from the petition though the petition was already dismissed.

5. One thing is clear from the above. The District Judge has been callous in entertaining the application in spite of the knowledge that this Court was seized of the matter. Secondly there is remiss on his part in directing notice in a cavalier fashion to Mr. Justice V. Khalid without even looking at the array of the parties or going through the contents of the application.

6. To supplement his explanation dated 6.9.1993 he has chosen to file an affidavit date 26.10.1993 in which he takes the following stand:

I, at the outset, humbly tender my unconditional apology in entertaining the application for the removal of the Secretary of the M.K.N. Matharasa Trust while this matter was pending before this Hon'ble Court. I submit that it was a serious lapse on my part to have ordered notice in the said application in a routine manner without fully ascertaining the contents of the application and the name of the respondents and without appreciating the gravity of the matter. Though it is not the least justification, I humbly state that I has handicapped by the lack of the full factual background of the case. I further beg to state that I never had the intention to entertain a parallel proceedings and interfere with the proceedings before this Hon'ble Court. I also had no intention to act in a manner to show disrespect to this Hon'ble Court and Hon'ble Mr. Justice Khalid. As soon as I realised the grave mistake and impropriety committed by me, I dismissed the application on the next hearing on

17.8.1993.

I further humbly submit that I have personally met Hon'ble Mr. Justice v. Khalid at his residence and tendered my sincere and unconditional apology for my above conduct. Mr. Justice Khalid was very kind enough to accept my apology. I am also enclosing my letter dated 25.8.1993 submitted to Hon'ble Mr. Justice Khalid.

7. It is gratifying to note that at the late stage wisdom has dawned on the learned District Judge who has realised his serious lapse in ordering notice on the application in a routine way. The dismissal of the application on 17.8.1993 is after the order of this Court on 16.8.1993 which has been extracted above. Therefore, that does not improve the situation for him. However, in view of the unconditional apology offered by him through his affidavit dated 26.10.1993, we do not think it is necessary to pursue the proceedings further. We do hope that the learned District Judge has realised that in the hierarchical system of Courts a willing and disciplined acceptance of the order of the higher courts is the fundamental feature of the system and that what the learned District Judge did in the case was perilously close to destroying this discipline. In view of his apology, we drop the further proceedings.