

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF  
SRI LANKA**

**CA Case No. WT 02 / 2014**

Wakfs Tribunal Appeal No.  
WT / 205 / 2012

Wakfs Board Case No.  
WB / 5420 / 2011

**A.C.M. Rasheed,**

Person-in-Charge of Ratmalana,

Jumma Mosque,

No. 4, 1<sup>st</sup> Lane,

Ratmalana.

**Appellant - Appellant**

**-Vs-**

**1. M.M. Isfahan,**

No, 35,

Athula Mawatha,

Mt-Lavinia.

**2. Mohamed Mohamed Ariff,**

No. 48/B,

Hotel Road,

Mt-Lavinia.

**3. M.H.M. Farouk,**

No. 25,

Dharmarama Road,

Ratmalana.

**4. Mohamed Saleem Zain Fazil,**

No. 62/9,

Dharmarama Road,

Ratmalana.

**5. Tuan Fareed,**

No. F/14,

Flat Kalldemulla Road,

Moratuwa.

**6. A.F.M. Navavi,**

No. 51,

Hena Road,

Mt-Lavinia.

**7. Mohamed Hussain Mohamed,**

No. 5/10, 1<sup>st</sup> Lane,

Ratmalana.

**8. A.F. Ahmed Ramly,**

**9. M.R. Gouse,**

**10.A. Usama Mansoor,**

**11.Irshad Basheer**

All persons purporting to act as Trustees of  
the Rathmalana Jumma Mosque.

**Respondents – Respondents**

**BEFORE**

**:**

**A.H.M.D. Nawaz, J.**

**COUNSEL** : A.R. Surendran, PC with Safana Gul Begum, M. Jude Dinesh and Maithreyi Rajasingam for the Appellant.

N.M. Shaheid with Nusky Lathiff for the Respondents.

**Argued on** : 29.07.2015, 23.09.2015 and 26.10.2015

**Written Submissions** : 03.11.2015

**Decided on** : 18.12.2015

**A.H.M.D. NAWAZ, J,**

By the petition of appeal dated 22<sup>nd</sup> October 2014, the Appellant-Appellant (hereinafter referred to as 'the Appellant') seeks to have, the antecedent appointment of trustees made by the Wakfs Board by its order dated 16<sup>th</sup> December 2012 and the subsequent order of the Wakfs Tribunal dated 23<sup>rd</sup> August 2014 affirming the said appointments, set aside. Besides the annulment of these two orders made by the Wakfs Board and Wakfs Tribunal respectively, the Appellant also seeks a direction from this Court to the Wakfs Board to appoint special trustees in terms of Section 14(1)(c) of the Muslim Mosques and Charitable Trusts or Wakfs Act No.51 of 1956 as amended (hereinafter sometimes referred to as the Act). In a nutshell the appeal to the Court of Appeal in this matter impugns two orders namely;

- i. the order made by the Wakfs Board dated 16<sup>th</sup> December 2012 appointing 11 trustees to the Ratmalana Jumma Mosque.

- ii. the order of the Wakfs Tribunal dated 23<sup>rd</sup> August 2014 affirming the aforesaid order of the Wakfs Board to appoint the 11 trustees.

Before I proceed to determine the rival contentions for and against the reliefs that have been articulated before me, I deem it necessary to set out the backdrop in which the instant appeal impugning these two orders has arisen.

### **Surrounding Matrix for the Instant Appeal**

The genesis of the instant appeal before this Court could be said to be the appointment of nine special trustees made by the Wakfs Board to the Jumma mosque as far back as 17<sup>th</sup> July 2011. The appointment of special trustees is a power which the Waksf Board enjoys by virtue of Section 14(1)(C) of the Act. Aggrieved by the appointment of these nine special trustees, the Appellant along with the persons-in-charge at that time had preferred an appeal to the Wakfs Tribunal in case no. WT/197/11 whereupon the Wakfs Tribunal set aside the order of the Wakfs Board to appoint the aforesaid special trustees but directed the Wakfs Board to make arrangements to ensure that fresh election be held within four months from the date of the said order by the persons-in-charge to elect or select new trustees according to past practice and the law.

In addition to annulling the appointment of the special trustees and ordering instead a fresh election to the Ratmalana Jumma Masjid, the Wakfs Tribunal in its order dated 23<sup>rd</sup> June 2012 also made another pertinent direction to the Wakfs Board namely;

*“In the event the persons-in-charge failed to hold election on or before 24<sup>th</sup> October 2012, then the Wakfs Board could appoint Trustees from members of the Jama’ath.”*

The interpretation section of the Act – Section 58 defines *Jama'ath* in relation to a mosque to mean-

*“The persons who ordinarily worship at, or participate in the religious or customary rites and ceremonies of, that mosque and whose names appear on the register of members of the mosque for the time being.”*

It is worthy of note that the task of ensuring the election or selection of trustees was entrusted with the persons-in-charge who included the appellant and as is usually the case, once the trustees are selected or nominated according to the practices, rules, regulations or other arrangements in force for the administration of the mosque, the Wakfs Board will proceed to confirm and appoint the persons so selected or nominated as trustees-see Section 14(1)(a) of the Act.

In fact since this case turns on section 14(1) of the Act which provides for three situations catering to three modes of appointment of trustees by the Wakfs Board, Section 14(1) of the Act could be more fully set out-

As soon as may be, after a mosque has been registered under section 13, the board-

- a. shall confirm and appoint a person or persons to be a trustees who is or have been selected or nominated according to the practices, rules, regulation or other arrangements in force for the administration of the mosque;
- b. if no trustee or trustees is or are appointed under paragraph (a), the board may appoint a person or persons to be a trustee or trustee's from among registered members of the Jama'ath of the mosque;

- c. may appoint a special trustee or trustees for a particular period if the board considers necessary for the proper administration of the mosque;

It has to be observed that when the Wakfs Tribunal by its order dated 23<sup>rd</sup> June 2012 enjoined a fresh selection of trustees it is Section 14(1)(a) of the Act that was contemplated by the Tribunal but the corollary too namely Section 14(1)(b) of the Act was also to kick in if fresh selections became incapable of being effected-that is to say in the event of a non selection of trustees according to the practices, rules, regulations or other arrangements in force the Wakfs Board would appoint persons as trustees from among registered members of the *Jama'ath*-so ordered the Wakfs Tribunal by its order dated 23<sup>rd</sup> June 2012. In other words a frustration of efforts to bring about a selection of trustees in terms of Section 14(1)(a) of the Act would result in the Wakfs Board setting about to appoint the trustees from among the registered members of the *Jama'ath* in terms of Section 14(1)(b) of the Act.

A perusal of both Paragraphs (a) and (b) of Section 14(1) of the Act indicates that the act of appointment of trustees by the Wakfs Board via Section 14 (1) (b) of the Act is contingent upon a failure to select or nominate trustees according to the prevailing practices, rules, regulations or other arrangements as enjoined by Section 14(1)(a) of the Act. When the Wakfs Tribunal made its order dated 23<sup>rd</sup> June 2012 it embodied both modes of appointment to be followed and directed the Wakfs Board to ensure the selection and appointment of trustees on these lines.

#### **Subsequent events before the Wakfs Board**

Upon a perusal of the proceedings before the Wakfs Board it is manifest that the Wakfs Board took on the order of the Wakfs Tribunal quite earnestly and set in motion its own efforts to implement the order of the Tribunal by noticing the parties inclusive of the Appellant who was one of the persons in charge

mosque for the nonce. The proceedings of the Board held on 29<sup>th</sup> July 2012, 26<sup>th</sup> August 2012, 16<sup>th</sup> September 2012, 23<sup>rd</sup> September 2012, 7<sup>th</sup> October 2012 and 18<sup>th</sup> November 2012 all indicate that the Wakfs Board had made its best endeavors to give effect to the order of the Wakfs Tribunal. This court observes that In the course of its endeavors to implement the order of the Tribunal dated 23<sup>rd</sup> June 2012, the Wakfs Board has concentrated its time and effort on securing a finalized *Jama'ath* register.

### **Jama'ath Register before the Board**

Since the practice in regard to selection or nomination of trustees for the Ratmalana Jumma Masjid is to effect the appointments from among the members in the *Jama'ath* Register, the proceedings before the Wakfs Board indicate strenuous efforts being made by the Board to secure a definitive register from which the selection/election could take place but this Court observes that the Appellant though he has admittedly submitted registers has been faulted on a number of occasions for having submitted imperfect registers containing among other things names of dead persons, females and even business establishments which cannot in any event form component parts of a *Jama'ath* register. It was brought home to the Wakfs Board that the register submitted by the Appellant also contained names of members of the *Jama'ath* of other mosques and a number of names of members so called had no corresponding addresses. This evidence reflected in the proceedings dated 23<sup>rd</sup> September 2012 remains uncontradicted.

*A fortiori* one could not be sanguine about the prospect of an election of trustees for the mosque given the kind of defective and fictional registers that were being submitted. But the Wakfs Board appears to have soldiered on with their exhortations on both the Appellant and the respondents to accomplish a definitive

register for the purpose of implementing the order of the Wakfs Tribunal dated 23<sup>rd</sup> June 2012. The proceedings dated 7<sup>th</sup> October 2012 reflect the repetition of the selfsame allegation being made against the Appellant namely he along with another was responsible for including in the latest register tendered to the Board a large number of names which do not belong to the *Jama'ath* of the Ratmalana Jumma Masjid and on top of it the Board was notified that the Register contained names of institutions which belonged to persons of other faiths. This evidence that transpired against the Appellant before the Board remains unchallenged and uncontroverted.

In fact on the next date *i.e* 18<sup>th</sup> November 2012 the board has observed that the whole process of holding the elections was being deliberately delayed owing to foul play and another date was given to finalize all steps in regard to the appointment of trustees. On the following date namely 9<sup>th</sup> December 2012 one cannot fault the board for arriving at the finding that the persons in charge were not at all interested in having a fair and transparent selection/election of trustees.

It was in those circumstances that the Board came to make its order dated 16<sup>th</sup> December 2012 by virtue of powers vested in it by Section 14(1)(b) of the Act. In a detailed order narrating the concatenation of events that virtually frustrated the operation of Section 14(1)(a) of the Act, the board took the correct view that they should set in motion the implementation of the alternative order suggested by the Tribunal namely;

*"In the event the persons-in-charge failed to hold election on or before 24<sup>th</sup> October 2012, then the Wakfs Board could appoint Trustees from members of the Jama'ath."*

It was in this backdrop that the Board proceeded to make the 11 appointments of trustees which were later challenged before the Wakfs Tribunal. Before making



these 11 appointments, the Wakfs Board made references to the mutually inconsistent *Jama'ath* registers that the Appellant filed and the documents produced by the Respondents-please see proceedings dated 16<sup>th</sup> December 2012.

It has to be observed that whilst the registers submitted by the Appellant have been challenged as fabrications, none of the material submitted by the Respondents has been satisfactorily impugned or attacked by the appellant as unworthy of credit. In fact the allegations were made by the Respondents that several members of the *Jama'ath* who sought registration on the *Jama'ath* register were repudiated by the Appellant and the evidence discloses that lists containing the rejected members have been brought to the attention of the Wakfs Board. These lists have not been challenged by the Appellant as concoctions. In the teeth of this evidence the Appellant has not satisfactorily offered an explanation before the Wakfs Board as to why the applications of these persons seeking to register themselves as members of the *Jama'ath* were refused and rejected. If one scrutinizes the proceedings before the Board one is fortified that the Board was possessed of material to distinguish between challenged registers and uncontradicted lists of members in order to exercise their discretionary power of appointment in terms of Section 14(1)(b) of the Act.

I also observe upon a perusal of proceedings dated 26<sup>th</sup> August 2012 that the Board was also in possession of a *Jama'ath* register that had already been tendered. The Wakfs Board also refers to a *Jama'ath* register which was valid as at 31<sup>st</sup> March 2011-vide a reference to this register in the proceedings dated 16<sup>th</sup> September 2012. The proceedings on that day also indicate objections that the Appellant submitted another list omitting about 130 names from the last list. Why this omission was culpably made by the appellant remains unexplained.

I must observe at this stage that this register as at 31<sup>st</sup> March 2012 has found its way into the record without any permission being sought from court to furnish it to court and it has to be observed that no document should be filed before this Court without seeking leave of court especially in a matter when this Court exercises appellate jurisdiction. No doubt it was a document, as the Wakfs Board states, that was already *in esse* before the Board. There were several other documents, both genuine and fabricated as the Wakfs Board calls it, that were placed before the Wakfs Board. But that fact alone does not absolve the Appellant from seeking permission of court to produce a document in order to buttress an argument which as I would presently show needed to be taken in the first instance before the Wakfs Board itself.

If there is an error on a question of fact which the primary fact finder such as the Board may have made as to a particular document such as this register, that error must have been brought home to the Wakfs Tribunal and an appellate order obtained on that document. If the statute imposes a requirement to go before the same primary fact finder such as the Wakfs Board as far as its power under Section 14(1)(b) of the Act is concerned and make representation that it has made a mistake on the document, then that argument must be addressed before the primary fact finder. It is only then it becomes competent for this court to rule on any error that the appellate body at the first tier namely the Wakfs Tribunal may have made on a question of fact latently lurking in that document. Parties cannot slip in a document at the appellate stage and plead that the Court of Appeal which exercises an appellate power at the second tier in these types of cases should make a primary finding of fact on a document. For several reasons which I would presently adumbrate in this judgment having regard to the statutory scheme in the Act, I hold

that this Court cannot now make a primary fact finding on a document which is produced for the first time only before this Court to make such finding. Neither the Board nor the tribunal was ever made aware that it was this document and document alone that vitiates the appointment of trustees because for the first time this Court is told the Board made a mistake of fact on this document. The tool that was contended to be material to vitiate the appointments was described by counsel for the Appellant as that error made by the board pertaining to this document which led to a patent want of jurisdiction in the board.

Before I turn to the argument on patent want of jurisdiction let me observe that this document along with several other material submitted before the Wakfs Board could not have gone begging in the consideration of criteria necessary for an appointment under Section 14(1)(b) of the Act.

The proceedings before the Board no doubt disclose a ding dong battle between the Appellant and the Respondents in which no finality could be arrived at as regards a definitive register and the events betray an odious and unholy deadlock which should at all times be avoided in the administration and management of a holy place of the Almighty.

The prime reason why I recited the above evidence before the Board is because I have to satisfy myself whether the Wakfs Board had before them unchallenged members of the Jama'ath from which pool they could appoint trustees as they did when they proceeded to appoint the 11 trustees on 16<sup>th</sup> December 2012.

#### **Section 14(1)(b) of the Act**

One cannot but ignore the terms of authority of appointment in section 14 (1) (b).

*“The board, if no trustee or trustees is or are appointed under paragraph (a), the board may appoint a person or persons to be a trustee or trustees from among registered members of the Jama’ath of the mosque.”*

As alluded to previously the interpretation section of the Act – Section 58 defines **Jama’ath** in relation to a mosque to mean-

*“The persons who ordinarily worship at, or participate in the religious or customary rites and ceremonies of, that mosque and whose names appear on the register of members of the mosque for the time being”.<sup>1</sup>*

There is evidence that the Wakfs Board was cognizant of the requirements stipulated for the exercise of their power to appoint trustees, because the Board has alluded to this in their order dated 16<sup>th</sup> December 2012 namely they were making the appointments as per the order of the Tribunal and *in terms of Section 14 (1) (b) of the Muslim Mosques and Charitable Trusts or Wakfs Act.*

#### **Argument before the Court of Appeal – patent want of jurisdiction**

But the argument put forward before me on behalf of the Appellant was that the Wakfs Board suffered from a patent want of jurisdiction to make the appointments of the 11 trustees. The complaint before me was that five trustees from among the 11 appointed trustees did not belong to the *Mahalla* or congregation of the Ratmalana mosque. In an interesting argument quite forcefully articulated by the Ms.Saffana Gul Begum Counsel for the Appellant she called it a patent want of jurisdiction which could be taken up for the first time before the Court of Appeal. Mr.N.M.Shaheid Counsel for the Respondents contended that this argument was never advanced before the Wakfs Tribunal which affirmed the appointments made

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<sup>1</sup> Introduced as amendment to section 58 by section 33 (b) of the Muslim Mosques and Charitable Trusts or Wakfs (Amendment) Act No 33 of 1982.

by the Board. Undoubtedly a patent want of jurisdiction renders an order or judgment null and void and can be raised at any time and a long line of precedents have dealt with the distinction between latent or contingent want of jurisdiction and patent want of jurisdiction.

In the case of *Beatrice Perera vs. The Commissioner of National Housing*<sup>2</sup> where judgment was entered by a Court without following the method of service of summons prescribed in the Civil Procedure Code, Tennakoon C.J. at page 365 drew a distinction between two classes of jurisdictional defects. The first class consists of instances where there is a "patent" or "total" want of jurisdiction. In this class there is a "*defectus jurisdictionis*" and the Court lacks jurisdiction over the 'cause, or matter or over the parties'. In the second class of cases the Court has jurisdiction in the respects referred to above but is denuded of competence or jurisdiction '*because of a failure to comply with such procedural requirements as are necessary for the exercise of power by Court*". Here the lack of competence is described as a "latent" or "contingent" want of jurisdiction, or a "*defectus triationis*". Tennakoon C.J., held that both classes constitute jurisdictional defects that result in judgments or orders that are void, and such judgment can be challenged both in the very Court and in the same proceedings in which it was made and also in collateral proceedings. It was further held that a judgment entered by the Court without jurisdiction is a nullity and can be challenged both in the very Court and in the proceedings in which it was had and also collaterally. S.N.Silva J (as he then was) also drew attention to these jurisdictional defects in *Isabella Perera Hamine v Emalia Perera Hamine*<sup>3</sup>

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<sup>2</sup> 77 N.L.R 361

<sup>3</sup> (1990) (1) Sri LR 8 at 14

In the case of *Kandy Omnibus Co. Ltd. vs. T.W. Roberts*,<sup>4</sup> Sansoni J. held that “It is not open to a person to confer jurisdiction by consent and no amount of acquiescence confers jurisdiction upon a Tribunal or Court where such jurisdiction did not exist”. In this case too the distinction between ‘patent’ and ‘latent’ want of jurisdiction was analyzed.

*“Where a court has jurisdiction in particular cases which depend on the existence of a certain state of facts a person who admits, or does not challenge the existence of those facts can estop himself from denying their existence at a subsequent stage of the proceedings”.*

#### **Argument of how patent want of jurisdiction arises**

One has to apply the above criteria to determine what type of jurisdictional error that the Wakfs Board suffered from if at all there was such an error. According to Counsel for the Appellant the patent want of jurisdiction arose thus. The document put in before this Court at the appellate stage namely the *Mahalla* or congregation register did not have the names of five persons who were appointed as trustees by the Wakfs Board. The absence of these five names from this particular register as at 31<sup>st</sup> March 2011 created a want of jurisdiction in the Wakfs Board to make their appointments. It has to be stated it was only after a question was posed by this Court that this argument was developed. The question was posed whether the guideline in Section 14(1)(b) of the Act was followed in making these appointments as that provision specifically states that if no trustee or trustees is or are appointed under paragraph (a), the board may appoint a person or persons to be a trustee or trustees from among the registered members of the *Jama’ath* of the mosque. The word *Jama’ath* has two components. A person must ordinarily worship at, or

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<sup>4</sup> 56 N.L.R. 294 at p.304

participate in the religious or customary rites and ceremonies of the mosque and in addition his name must appear on the register of members of the mosque which is *in esse* for the time being. Merely because a person's name appears on the register of members of a mosque it does not qualify that person to be a member of the *Jama'ath* of the mosque. Additionally he must ordinarily worship at, or participate in the religious or customary rites and ceremonies of the mosque. Whether a particular person fulfills these two components to be eligible to become a trustee is of course a question of fact that has to be gone into by the primary fact finder –the Wakfs Board. To that extent in the exercise of its jurisdiction to appoint a trustee in terms of Section 14(1)(b) of the Act, the Board is competent to hold its own inquiries.

There were over four registers that were submitted by the Appellant before the board. In addition there was also a register as at 31<sup>st</sup> March 2011. Which of these registers was utilized by the Wakfs Board to make these five appointments is not clear and there is no argument on this aspect that was ever addressed before the Tribunal. It is only in this Court that this particular register as at 31<sup>st</sup> March 2011 has been put forward as the pivotal register from which the appointments have been allegedly made. I find no evidence upon the proceedings before the Wakfs Board that it was this register that was used by the Wakfs Board to make these appointments. I hold the view that in the ambiguity surrounding as to which register was used, patent want of jurisdiction cannot be anchored to be flowing from this document.

### **Latent want of Jurisdiction**

Assuming without conceding that this was the register that was used by the board to make these appointments in my view it would not create a patent want of

jurisdiction. As Sansoni J stated in *Kandy Omnibus Co. Ltd. vs. T.W. Roberts*,<sup>5</sup> a latent or contingent want of jurisdiction arises only when a state of facts has to exist before assumption of jurisdiction but yet the statutory body or court assumed that jurisdiction despite the non existence of such a state of facts. The jurisdiction of the statutory body is contingent upon the existence of such facts. No doubt the jurisdiction to make the appointments in terms of Section 14(1)(b) of the Act is contingent upon the existence of the names of the intended trustees upon a register. As the Counsel for the Appellant argued before this Court, if the names of those five trustees appointed were absent from this register before the Board assumed the jurisdiction to appoint them, certainly it is a jurisdictional defect but in my view it is not a patent want of jurisdiction. Nothing is patent to this court because it is not clear that it was this register that the Board used. The presence or absence of a member of a mosque on its register is a question of fact that has to be investigated. If as the Appellant alleges non members of the mosque had been appointed as trustees no appointment would have been valid. But it should have been brought to the notice of the primary fact finder or the Wakfs Tribunal at the appellate stage.

In fact the statute – the Muslim Mosques and Charitable Trusts or Wakfs Act has enacted a salutary provision namely Section 14(1)(1A) to cure this kind of latent or contingent want of jurisdiction. In terms of this provision if the board has committed an error on the question whether a particular member is really a person belonging to the congregation of a particular mosque, this question has to be agitated before the Wakfs Board in the first instance. The legislature has granted an opportunity to an aggrieved person to go before the Wakfs Board which made the allegedly invalid

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<sup>5</sup> 56 N.L.R. 294 at p.304



appointment and demonstrate that the board has made an error thereby exercising a jurisdiction which they did not have. The said provision – Section 14(1)(1A) of the Act goes as follows:-

*“The board may at any time after the appointment of a person as trustee of a mosque revoke his appointment if it is satisfied that such appointment was made by reason of a mistake of law or of fact.”*

The Appellant who has functioned as a person-in-charge for a long time would have done well to reflect on this provision and agitate this alleged usurpation of jurisdiction before the Wakfs Board but he rather chose to turn a Nelsonian eye to an error which he now alleges at a belated stage to be destructive of the appointments made on 16<sup>th</sup> December 2012.

There was also another opportunity available to this appellant in Section 9H of the Act. He could have had recourse to Section 9H(2)(a) in order to draw the attention of the Tribunal to this particular document so that it could make its determination. This Appellant could have also utilized Section 9H(2)(b) to lead evidence, whether oral or documentary, to bring home the jurisdictional defect which he now alleges before this Court to have vitiated the appointments made by the board.

Thus there has been total waiver or acquiescence on the part of the Appellant in the proceedings before the Wakfs Board and the Tribunal as regards this jurisdictional issue. This Court cannot re-hear questions of fact that should have been heard and determined by the primary decision makers and an appellate court doesn't have competence to assume original jurisdiction to determine questions of fact which the Appellant could have easily resolved before the two *fora* below. Having culpably failed to utilize those statutory rights, the appellant cannot now be heard to invoke an appellate jurisdiction to determine questions of facts *a la* a primary decision

maker. In the circumstances this Court has no reason to interfere with the order of the Wakfs Tribunal dated 23<sup>rd</sup> August 2014.

Before I part with this judgment I would like to observe that in the case of *Ishak vs. Thowfeek*<sup>6</sup> the Privy Council held that the matters which a statute requires a statutory functionary to “have regard to” do not control the validity of the exercise of the discretion. For example the Wakfs Board was vested by statute with discretionary power for the appointment of trustees of a mosque, in the following terms:

“14.(1) As soon as may be, after a mosque has been registered...the Board shall appoint a person or persons to be a trustee or trustees of that mosque. In selecting a person or persons for appointment as a trustee or trustees of a mosque, the Board shall have regard to the following matters:-

- (a) the terms of any trust instrument relating to that mosque;
- (b) the religious law and custom of the sect of the Muslim community concerned;
- (c) the local custom with reference to that mosque; and
- (d) the practice and other arrangements in force for the administration of the mosque.”<sup>7</sup>

The Board having called for applications for appointment as trustee of the Dawatagaha Mosque and Shrine in Colombo 7, and having heard the parties concerned, exercised their discretion to appoint as trustee a person who was not

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<sup>6</sup>(1968) 71 NLR 101

<sup>7</sup> As the Act stood prior to its amendment by Act No 33 of 1982

descended from Mamina Pullai, who in 1857 had created the trust which provided for the said Mosque and Shrine, in preference to persons so descended who the Board decided were “unsuitable for appointment”. Since the decision of the Board showed that in making the appointment of trustee they did “have regard to” the matters specified in paragraphs (a), (b), (c) and (d) in the enabling provision quoted above, the validity of the appointment was upheld although a consideration of “most of these matters would be in favour of appointing” a person descended from Mamina Pullai.”<sup>8</sup>

It repays attention that the Board does make reference in their order dated 16<sup>th</sup> December 2012 that they paid attention to the tenor of Section 14(1)(b) of the Act. In the circumstances on the evidence available before this Court it is manifest that no error of fact or law has been established in the order of the Wakfs Tribunal. Accordingly the appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

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<sup>8</sup> Ibid p.106-107 (P.C)