

H.C.J. 282/61**MAHMUD EL-SARUJI et al.****v.****MINISTER OF RELIGIOUS AFFAIRS AND THE MOSLEM COUNCIL. ACRE**

In the Supreme Court sitting as the High Court of Justice
[February 6, 1963]
Before Silberg J., Landau J. and Berinson J.

Administrative law - consultative body appointed by Minister- judicial review of its powers and activities.

The petitioners complained generally of the alleged interference of the Minister of Religious Affairs in matters affecting the Moslem Community of Acre and more particularly of the activities and powers of the local Moslem council appointed by the Ministry.

Held. The departure from the country of Moslem leaders and officials as a result of the events of 1948 had led to a complete collapse of all Moslem institutions and their ceasing to function. In order to remedy the situation and recreate these institutions the Ministry had not proceeded under any express statutory provision but by virtue of general power vested in the Government and within the framework of the State budget. In the course of doing so, it appointed the second respondent with which to consult and to act as its agent in the distribution of necessary funds for various public Moslem purposes. No evidence of misuse of funds had been adduced. In all these circumstances, the High Court of Justice would not intervene to control the action by the Ministry or its agent, either generally or specifically, in its choice of advisers or in resolving the public political problems with which it is faced.

M.N. Huari for the petitioners.

Z. Bar-Niv, State attorney, *Z. Terlo* and *M. Cheshin* for the first respondent.

E. Berenblum for the second respondent.

LANDAU J. The order nisi granted to the three petitioners, residents of Acre and members of the Moslem community there, calls upon the Minister of Religious Affairs and the Moslem Council of Acre to show reason "why the first respondent should not cease from interfering in matters affecting Moslems, their charitable trusts, courts of law and personal situation, and why he should not procure that the activities and powers of the Moslem Council in Acre, appointed by him, should not cease and it be dispersed."

The petitioners' application, as formulated in the order nisi, contained two separate complaints, one general, regarding the position of the Moslem Council in the country as a whole, and one regarding the powers and activities of the Moslem Council of Acre (or more precisely the Consultative Council for Moslem Religious Affairs of Acre).

Under the first complaint, petitioners' counsel tried to show the lack of organisation and neglect which in his opinion prevail in respect of the affairs of the Moslem community in the country. Let it be said at once that this Court is not the suitable forum for voicing general complaints of this kind. The affidavit on behalf of the first respondent, made by Mr. S.Z. Kahana, the director-general of the Ministry of Religious Affairs, describes the changes that have occurred with regard to the country's Moslem Community, in the following terms:

"Upon the termination of Mandatory rule and the outbreak of the War of Independence the religious institutions of the Moslem Community in the country collapsed. Senior religious personnel, muftis and qadies - except for the late Sheikh Ta'ahar Tabri (who died in 1959), Mufti and Qadi of the Tiberias district - fled from the country. The system of religious jurisdiction broke down completely. Most of the officials concerned in religious services fled. The communal educational system and social welfare and health institutions ceased to exist. Among those who left the country were also the members of the Supreme Moslem Council and its Wakf Committee (bodies founded at the beginning of Mandatory rule) and the members of the Governmental Awkaf Commission, appointed by the High Commissioner by virtue of the Palestine (Defence) Order in Council, 1937. Israeli Moslems thus remained without religious organisation and religious leadership."

We accept this as an accurate description of the situation created as a result of the War with which the State of Israel on its foundation was fettered by the Arab states and the flight of a large part of the Moslem population from its territory. Mr. Kahana's affidavit goes on to describe the steps taken by his Ministry to repair as far as could be the organisational breakdown of the Moslem Religious Community in Israel: the jurisdiction of the Moslem religious courts was restored on a new legal basis by the Sharia Courts (Validation of Appointments) Law, 1953, and the Qadis Law, 1961. These courts continue to act under the powers granted to them by article 52 of the Palestine Order in Council. Petitioners' counsel did not dispute that in his summation and so retracted the deprecatory remarks about the Qadis of these courts which he had permitted himself to indite in paragraph 10(c) of the petition.

Mr. Kahana went on to detail in his affidavit the different measures taken by the Ministry of Religious Affairs in order to fill the vacuum created in the provision of religious requirements, religious education, charity, social welfare and so on for the country's Moslem Community. In so doing, the Ministry of Religious Affairs did not act under express statutory provision but by virtue of general governmental powers resting in the Government and its Ministries, within the financial framework of the State's Budget approved by the Knesset.

The petitioners and those for whom they speak are not pleased with the existing order of things. I assume that in complaining they express the view of some part of the members of Acre's Moslem community, although I do not know whether they constitute a majority of the community. They would prefer the autonomy of the Moslem community regarding all the matters raised in their petition, but that is certainly a public-political problem not for this Court to be concerned with. Under the democratic regime existing in our country, the Knesset is the arbiter in matters of this kind and it possesses the authority to initiate changes in the existing position through the enactment of new laws, if it finds it proper so to do.

The main burden of the petitioners' complaints, to all appearances, concerns the administration of Moslem charitable and religious trusts (awqaf). Under the British Mandate these trusts were administered by the Supreme Moslem Religious Council, set up

by an order of the High Commission of 20 December 1921 (N. Bentwich, *The Laws of Palestine*, vol. 2, pp. 395 ff.). Among the functions of the Council, appointed in the manner prescribed by the order, was the control and administration of Moslem charities (paragraph 8(1)(a)). There were also set up a General Awkaf Committee and local awkaf committees under paragraphs 10 ff. In 1937, the administration of Moslem charitable trusts was transferred to a Commission appointed by the High Commissioner under the Defence (Moslem Awkaf) Regulations, 1937 (Official Gazette 1937, Suppl. 2, No. 730-731). That continued to be the position until the end of the Mandate when members of the Commission left the country and became absentees. The original order of 1921 was wholly repealed by section 25 of the Qadis Law, 1961; petitioners' counsel was mistaken in maintaining that the repeal went only to the provision relating to the appointment of qadis. It is questionable, however, whether as a result of the repeal, the said Regulations of 1937 were also repealed. In his summation, the State Attorney argued that these also were repealed by implication. It seems to me that this argument is inconsistent with what is said in paragraph 3(k) of Mr. Kahana's affidavit. What emerges from the latter is that the 1937 Regulations were not repealed and that the administrative powers of the appointed Commission became "absentee property" in the sense of section 1(a) *ad finem* of the Absentees' Property Law, 1950, upon its members becoming absentees. I hesitate from ruling definitively on this question which was not exhaustively argued in these hearings, but I incline to the latter view, that the 1937 Regulations exist independently, without being linked to the 1921 Order, although the Commission replaced the body instituted by the 1921 Order. The Regulations indeed vest in the Commission the powers of the Council under the old order (see regulation 5) but they are not, for that reason alone, to be regarded as an enactment intended merely to amend the Order. The result, it would appear, is that the Government to which the powers of the High Commissioner passed may but is not bound to appoint a new Commission under the 1937 Regulations and, so long as it does not, public Moslem religious and charitable trusts continue to be managed by the Custodian of Absentees' Property who took the place of the Commission that existed on the eve of the establishment of the State. I have found no basis for the vague submission of petitioners' counsel in his summation, that the right to control the funds of these trusts lies in any event with the Moslem residents now living in the country. No precedent was cited to base this view.

The petitioners' complaints about the second respondent's activities are in the main that it acts without authority and has no proper concern for Moslem religious matters in Acre. The petition also alleges misuse of funds entrusted to its members. From the affidavits in reply by Mr. Muhmad Habashi, one of such members, and by Mr. Kahana it emerges that the council was established by the Minister of Religious Affairs as a consultative body on matters of religious, social welfare and educational services. The Ministry of Religious Affairs is also assisted by the Council in implementation of the activities initiated by the former for the benefit of the Acre Moslem community. To this end money is on occasion passed to the Council intended for the requirements of the city's Moslem community and the Council lays out the money in accordance with the directions and under the prescribed supervision of the Ministry. When the said affidavits were made on behalf of the respondents, the members of the consultative Council were Sheikh Mussa Tabri, the principal Qadi, who acted as chairman, Sheikh Jemal Saadi, Imam and preacher of the Aljezar Mosque, Ahmad Edalbi, a notable of the community, and the deponent Muhmad Habashi who is also a deputy mayor of Acre.

This is not a commission appointed under enacted law but, as I have said, a consultative council which the Minister of Religious Affairs appointed in order to maintain contact with the Moslem community of the city. In so far as the council is entrusted with the allocation of money for the community's requirements, it acts as agent of the Ministry of Religious Affairs. The Minister of Religious Affairs is interested in choosing advisers in this field, whom he considers to be fit for the task of representing the community, and this Court will not direct him to choose other fitter advisers. As for the activity of the Council, we allowed petitioners' counsel to cross-examine at length but in spite of his protracted assault on the witness, Mr. Habashi, his efforts were in vain as regard the matters touched upon in cross-examination. The impression one obtains from the cross-examination is of conflict between contending groups of community workers. No indication was given to us of misuse of funds or of other acts contrary to good order on the part of members of the Council. In my opinion, the order nisi should be discharged.

SILBERG J. I agree.

BERINSON J. I agree.

Order nisi discharged.

Judgment given on February 6, 1963.