

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

WRIT PETITION No.14504 of 2015

% 07.07.2015

Between:

Anwar-ul-Uloom Educational Association
And another.

... Petitioners

AND

State of Telangana,
Rep.by its Principal Secretary,
Minority Welfare Department,
Secretariat, Hyderabad,
And others.

...Respondents

Counsel for petitioners: Sri S.Niranjan Reddy

Counsel for the Respondents : The Advocate General

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> Head Note:

? CITATIONS:

1. AIR 1964 SC 777
2. 2015 (4) ALT 44 (DB)

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.14504 of 2015

ORDER:

Heard the learned Counsel for the petitioners and the learned Advocate General for the respondents.

The present Writ Petition is filed challenging the appointment of the second respondent as a competent authority vide G.O.Rt.No.71, dated 05.05.2015, and for a direction to the first respondent to forthwith constitute a Waqf Board in accordance with Section 14 of the Waqf Act, 1995.

The admitted case of the parties is that the tenure of the erstwhile Waqf Board came to an end in December, 2013, and a Special Officer was appointed to manage the affairs of the Waqf Board and his term also came to an end in June 2014. In the meanwhile, the State was bifurcated with effect from 02.06.2014. On 20.06.2014 a Special Officer was appointed for the Telangana State Waqf Board for a period of one year, and the said period of one year was reduced to six months vide G.O.Rt.No.77, dated 23.06.2013. Another G.O.Rt.No.298, dated 01.08.2014 was issued appointing the erstwhile Special Officer as the Director of Minorities Welfare, Hyderabad, and also as the Special Officer of the Waqf Board, until further orders. G.O.Rt.No.18, dated 08.08.2014, was issued fixing the tenure of the Special Officer as six months. The Special Officer was reappointed by G.O.Rt.No.16, dated 06.02.2015, after expiry of the period of six months. G.O.Rt.No.73, dated 20.06.2014, was challenged in W.P.No.2326 of 2015, and this Court, by

order dated 24.03.2015 in W.P.M.P.No.3105 of 2015, suspended the said Government Order. But at that time, the said G.O.Rt.No.73, dated 20.06.2014, was not in operation by virtue of G.O.Rt.No.298, dated 01.08.2014, which superseded all the earlier Government Orders. While so, the Government appointed a competent authority to exercise powers and functions of the Waqf Board for a period of six months by G.O.Rt.No.71, dated 05.05.2015, which is challenged in the present Writ Petition.

It is an admitted case of both the parties that there is no provision for appointment of a Special Officer or competent authority after the expiry of the tenure of the Waqf Board under the provisions of the Waqf Act. In that situation, learned Counsel for the petitioners submitted that the appointment of the second respondent under G.O.Rt.No.71, dated 05.05.2015, should be set aside and the first respondent should be directed to constitute the Waqf Board in accordance with Section 14 of the Waqf Act.

Learned Advocate General submitted that the Headquarters of the Waqf Board is located in Hyderabad and it is one of the institutions specified in the Tenth Schedule governed by the provisions of Section 75 of the Andhra Pradesh Reorganisation Act, 2014. The Government framed a scheme for transfer of assets, rights and liabilities as required under Section 102 of the Waqf Act and submitted the same to the Central Government and the decision of the Central Government is awaited. In order to protect the interest of the properties of the Waqf Board, a competent authority is appointed under Section 103 of the Andhra Pradesh Reorganisation Act read with Section 102 of the Waqf Act. He relied on a decision of the Constitution Bench of the Supreme Court in

M.Ramappa v. Government of Andhra Pradesh^[1]

Now we have to consider the relevant provisions of law in this case. Section 102 of the Waqf Act, reads as follows:

102. Special provision for reorganisation of certain

Boards:- (1) Where on account of the reorganisation of States under any law providing reorganisation of States, the whole or any part of a State in respect of which a Board was, immediately before the day of such reorganisation, functioning has been transferred on that day to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that it should be reconstituted as an Intra-State Board for the whole or any part of the State, the State Government may frame a scheme or such dissolution of such reconstitution, including proposals regarding the transfer of the assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward the scheme to the Central Government.

(2) On receipt of a scheme forwarded to it under sub-section (1) the Central Government may, after consulting the Council and the State Government concerned, approve the scheme with or without modifications and give effect to the scheme so approved by making such order as it thinks fit.

(3) An order under sub-section (2) may provide for all or any of the following matters, namely:-

- (a) the dissolution of the Board;
- (b) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board.
- (c) the area in respect of which the reconstituted Board or new Board shall function and operate;
- (d) the transfer, in whole or part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer:

- (e) the substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;
- (f) the transfer or re-employment of any employee of the Board to or by, any such transferee and subject to the provisions of law providing for the reorganisation of the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employment; and
- (g) such incidental, consequential and supplemental matters may be necessary to give effect to the approved scheme.

(4) Where an order is made under this section transferring the assets, rights and liabilities of any Board, then, by virtue of that order, such assets, rights and liabilities of the Board shall vest in, and be the assets, rights and liabilities of, the transferee.

(5) Every order made under this section shall be published in the Official Gazette.

(6) Every order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.”

There is no dispute that the erstwhile Andhra Pradesh Waqf Board is one of the institutions included in the Tenth Schedule and it should be governed by Section 75 of the Andhra Pradesh Reorganisation Act.

Section 75 of the Andhra Pradesh Reorganisation Act reads as follows:

75. Continuance of facilities in certain State institutions:- (1) The Government of the State of Andhra Pradesh or the State of Telangana, as the case may be, shall, in

respect of the institutions specified in the Tenth Schedule to this Act, located in that State, continue to provide facilities to the people of the other State which shall not, in any respect, be less favourable to such people than what were being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments within a period of one year from the appointed day or, if no agreement is reached within the said period, as may be fixed by order of the Central Government.

(2) The Central Government may, at any time within one year from the appointed day, by notification in the Official Gazette, specify in the Tenth Schedule referred to in subsection (1) any other institution existing on the appointed day in the States of Andhra Pradesh and Telangana and, on the issue of such notification, such Schedule shall be deemed to be amended by the inclusion of the said institution therein.”

Now the appointment of the second respondent is sought to be supported by relying on Section 103 of the Andhra Pradesh Reorganisation Act, which reads as follows:-

“103. Power to name authorities, etc., for exercising statutory functions:- The Government of the State of Telangana, as respects the transferred territory may, by notification in the Official Gazette, specify the authority, officer or person who, on or after the appointed day, shall be competent to exercise such functions exercisable under any law in force on that day as may be mentioned in that notification and such law shall have effect accordingly.”

In the case of **M.Ramappa** (supra), the Supreme Court was considering the case of a public servant in the then Hyderabad Revenue Service holding the post of Deputy Secretary to the Government in the Public Works Department. An enquiry was held under Section 4 of the Hyderabad Public Servants (Tribunal of Enquiry) Act, 1950, by the Tribunal for Disciplinary Proceedings and the appellant's dismissal from service was recommended. After giving notice to the appellant, the Government of Andhra Pradesh ordered the dismissal of the appellant. It

was contended before the Supreme Court that though the enquiry was properly commenced, the successor Tribunal of the Disciplinary Proceedings was not qualified, but he heard the arguments and submitted the report. This Court considered the question as to whether the successor was disqualified to act as the Tribunal. It was held by this Court that in view of the provisions of the States Reorganisation Act and the Notification issued by the Government of Andhra Pradesh on November 1, 1956, the successor was competent to exercise the functions exercisable under the Hyderabad Act. Accordingly, the contention was rejected by the High Court. When the matter came up before the Supreme Court, the Supreme Court considered Sections 122 and 127 of the States Reorganisation Act, 1956, and held that even if it is inconsistent with anything in the Hyderabad Public Servants (Tribunal of Enquiry) Act, 1950, by reason of Section 127 and the power granted by Section 122 of the States Reorganisation Act, it was competent to the Government of Andhra Pradesh to name an authority under the Hyderabad Act even though that authority might not have been qualified under the latter Act.

In the instant case, there is a vacuum with regard to the appointment of the authority under the provisions of the Waqf Act, when the term of the then Waqf Board came to an end. However, Section 102 of the Waqf Act makes a provision for preparation of a scheme and passing of an order by the Central Government, after considering the same. Since the matter is pending with the Central Government and no orders have been passed as on today, we are not concerned with Section 102 of the Waqf Act in the present proceedings. The impugned order has to be seen in the light of Section 103 of the Andhra Pradesh

Reorganisation Act, which is extracted above. There is no dispute that the Headquarters of the erstwhile Andhra Pradesh Waqf Board is situated in Hyderabad and it is one of the institutions included in the Tenth Schedule. The institution has to be governed in accordance with Section 75 of the Andhra Pradesh Reorganisation Act. So long as the institution is located with its Headquarters in the State of Telangana, the State of Telangana can appoint the competent persons to run the institution subject to the provisions of Section 75 read with Section 103 of the Andhra Pradesh Reorganisation Act. The appointment of the competent authority is provided in Section 103 of the Andhra Pradesh Reorganisation Act.

Learned Counsel for the petitioners submits that the State of Telangana can appoint a competent authority only in respect of territory of State of Telangana, but since the Andhra Pradesh Waqf Board is a common institution for both the States, the State of Telangana cannot appoint the competent authority.

I am unable to agree with the aforesaid contention. In view of the location of the Headquarters of the erstwhile Andhra Pradesh State Waqf Board in Hyderabad, it is competent for the State of Telangana to appoint the competent authority under Section 103 of the Andhra Pradesh Reorganisation Act. The appointment of such competent authority is for an institution which is included in the Tenth Schedule of the said Act. The words mentioned “as respects the transferred territory” occurring in Section 103 of the Andhra Pradesh Reorganisation Act cannot be confined in relation to the territory held by the State of Telangana, but the State of Telangana, can, in respect of the institutions which are located in the State of Telangana, take necessary action appointing competent

authority under Section 103 of the Act subject to Section 75 of the Andhra Pradesh Reorganisation Act. This type of construction avoids vacuum consequent to the expiry of the tenure of the Waqf Board and also provides continuance of the same. So long as the institution remains common and is located in the State of Telangana, the State of Telangana would have the jurisdiction to appoint the Managing Committee of the Head of the institution or the competent authority, as it thinks fit in appropriate case.

This Court had an occasion to consider the effect of institutions included in Tenth Schedule and a Division Bench of this Court in

A.P.State Council of Higher Education v. Union of India^[2], held as follows:

“38. On a fair reading of Section 5 of Act, 2014, as correctly contended by the learned A.G. for the State of Telangana, the State of Andhra Pradesh is a mere user of the city of Hyderabad for a maximum period of ten years. It has no proprietary right, title and interest in this city and none of the assets which belong to the erstwhile State of Andhra Pradesh, located at Hyderabad, can be claimed by the State of Andhra Pradesh except in accordance with Act, 2014. Similarly, any institutions mentioned in the tenth schedule, situated in the territory of bifurcated State of Andhra Pradesh will stand allocated to that State and the State of Telangana cannot have any claim over the said property. For example, Sri Padmavathi Mahila University, Tirupati, which is situated in Tirupati, at Sl.No.57 of the tenth schedule, will stand allocated exclusively to the State of Andhra Pradesh. However, despite this legal status of the institutions mentioned in the tenth schedule, they will continue to serve the people of the other State within which it is not located, which will not be less favourable to such people than what were being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments within one year from the date of the appointed day.”

In the instant case, the State of Telangana thought it fit to appoint a competent authority under Section 103 of the Andhra Pradesh Reorganisation Act in respect of the common institution of the Andhra Pradesh State Waqf Board by issuance of G.O.Rt.No.71, dated 05.05.2015, and there is no illegality in the appointment of the second respondent as a competent authority. The provisions of Section 102 of the Waqf Act have to be read harmoniously with Section 103 of the Andhra Pradesh Reorganisation Act and Section 75 thereof. When they are read harmoniously, the impugned G.O.Rt.No.71, dated 05.05.2015, does not suffer from any illegality.

The Writ Petition is liable to be dismissed and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

07.07.2015

Note: LR copy to be marked: Yes

B/o.

vs

[\[1\]](#) AIR 1964 SC 777

[\[2\]](#) 2015 (4) ALT 44 (DB)