

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.519 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the learned Single Judge, in W.V.M.P. No.4445 of 2016 in W.P.M.P. No. 46900 of 2016 in W.P. No. 38056 of 2016 dated 7.4.2017, making the interim order granted earlier, in W.P.M.P. No. 46900 of 2016 dated 4.11.2016, absolute.

The proceedings under challenge in the writ petition was the order dated 29.9.2016 passed by the District Educational Officer, Hyderabad, noting the change of Correspondentship in favour of the appellant herein from the date of issue of the order. Prior thereto, by proceedings dated 18.8.2010, the District Educational Officer, Hyderabad, had noted the change of Correspondentship in favour of Sri A. R. Zaffar, in relation to the Asafia High School, Malakpet, with effect from 15.3.2001.

The submission of Sri S. Ashok Anand Kumar, learned counsel for the appellant, and Sri V. Ravi Kiran Rao, learned counsel for the 8th respondent, in this appeal is that, after the death of Sri A.R. Zaffar, the appellant was the Correspondent; and since the proposal to note the change of his name as the Correspondent emanated in the year 2012 itself, the District Educational Officer was justified in noting the change in the name by his proceedings dated 29.9.2016.

The respondents-writ petitioners had earlier filed O.A. No. 64 of 2013 before the A.P. State Wakf Tribunal. They filed I.A. No. 155 of 2014 therein to restrain the respondents therein from interfering with or causing any disturbance to the management of the first applicant (Mumtaz Yaruddawla Wakf) through applicant No.2 (the 2nd respondent herein) as the Secretary, and in administering various educational

institutions run by the 1st respondent-Wakf with the 2nd respondent as the Correspondent, pending disposal of the O.A.

In its order, in I.A. No. 155 of 2014 dated 30.9.2014, the Wakf Tribunal noted that the first applicant was a Wakf created in the year 1934; subsequently, it was being maintained; it was running educational institutions, among others, the Asifia Primary and High School at Malakpet, and carrying on business with some commercial properties at Lakdi Ka Pool and other areas. The Wakf Tribunal passed an interim order of injunction restraining the respondents therein, and their representatives, from interfering with, or causing any disturbance to, the management of applicant No.1 through applicant No.2 as the Secretary and Correspondent; and in administering various educational institutions run by applicant No.1 with applicant No.2 as the Correspondent.

Aggrieved thereby, the 8th respondent in this appeal, along with another, filed C.R.P. No. 3497 of 2014 before this Court. In its order in C.R.P. No. 3497 of 2014 dated 14.11.2014, this Court noted that the IA was filed in the context of recognition of the Correspondent of the Institutions; the 2nd respondent in the revision, (the 2nd respondent herein) had been working as the Secretary and Correspondent since the last several decades; a change, as required under law, was yet to take place; and taking these and other aspects into account, the Wakf Tribunal had directed that the petitioners (including the 8th respondent herein) be restrained from interfering with the administration of the institution by the 2nd respondent. The learned Judge modified the order passed by the Wakf Tribunal in I.A. No. 155 of 2014 in O.A. No. 64 of 2013 dated 30.9.2014, and directed that the 8th respondent herein should also be a part of the Managing Committee of the 1st respondent; he was entitled to take an active part in the affairs of the institution and to put forward his views on matters pertaining to admission, appointments or other aspects of the administration of the institution;

and any expenditure, exceeding Rs.1.00 lakh, could only be incurred with the specific approval of the Wakf Tribunal.

The effect of the order, in C.R.P. No. 3497 of 2014 dated 14.11.2014, is that the 8th respondent is also required to be permitted to take active part in the affairs of the institutions administered by the 1st respondent herein, and to put forward his views on the various matters enumerated in the order. The interim order of injunction granted by the Wakf Tribunal, restraining the respondents therein from interfering with the right of the 2nd respondent to administer the institutions (which would include the Asafia High School), has not been modified, except to the extent indicated hereinabove. Consequently, in terms of the order of the Wakf Tribunal, the 2nd respondent herein is entitled to continue as a Correspondent without interference from the respondents therein.

It is now contended before us by Sri S. Ashok Anand Kumar, learned counsel for the appellant, that, since the appellant herein was not a party to the O.A, the said order would not disable the Government from exercising its powers, under Section 24(2) of the A.P. Education Act, 1982 (for short 'the Act'), and to take note of a change in the Correspondent. Section 24(2) empowers the management to nominate a person to manage the affairs of the institution, whether called by the name of Secretary, Correspondent or by any other name; and intimate such nomination within 30 days to the competent authority. All that Section 24(2) requires is for the Management to intimate the competent authority of the fact that a person has been nominated by them, to manage the affairs of the institution, called the Secretary or Correspondent.

Section 24 relates to the appointment and removal of the manager of a private institution. As the management of a private institution has the power to nominate a person to manage the affairs of its institutions, Section 24(2) only requires intimation, of such nomination, to the competent authority and not to seek his approval. However, the Asafia

High School is said to be an aided educational institution and, in terms of the Grant-in-aid Code, approval of the competent authority is required, and not a mere intimation. The very fact that the authorities have noted the change in Correspondent, and have not considered whether or not approval should be granted, shows that the provisions of the Grand-in-aid Code was not even examined when the order, impugned in the Writ Petition, was passed. Be that as it may, these are all matters which are required to be heard in detail by the learned Single Judge. Prima facie, the order of the Wakf Tribunal, in I.A. No. 155 of 2014 in O.A. No. 64 of 2013 dated 30.11.2014, entitles respondent Nos. 1 and 2 herein to administer the Asaifa Primary and High School.

While certain receipts are referred to by Sri Ashok Anand Kumar, learned counsel, to contend that it is the appellant who continues to be the Correspondent, and that salaries are being paid by him to the staff, these are again matters which are required to be considered, within the parameters of judicial review, by the Learned Single Judge when the writ petition is finally heard. In an intra-Court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. The learned Single Judge has, in the order under appeal, observed that the writ petition itself is required to be finally heard, and has posted the matter for final hearing after Summer Vacation. Exercise of discretion, by the learned Single Judge in making the stay absolute, does not suffer from such an infirmity as to justify interference under Clause 15 of the letters Patent.

Both Sri S. Ashok Ananad Kumar, learned counsel for the appellant, and Sri V. Ravi Kiran Rao, learned counsel for the 8th respondent, would submit that, after the learned Single Judge passed the order under appeal, making the stay absolute, respondent No.2 had forcibly locked the premises; and the school is now closed and is under lock and key. Sri B. Nalin Kumar, learned counsel for respondent Nos.

1 and 2, on the other hand, would submit that the school is being run, and the submission to the contrary is incorrect.

Whatever may be the disputes between the appellant and the 8th respondent on the one hand, and respondent Nos. 1 and 2 on the other, it cannot result in the students, studying in an aided school, being deprived of their education. While we are not inclined to interfere with the order of the learned Single Judge, we consider it appropriate to direct respondent Nos. 5 and 6 to take necessary action to ensure that the students, studying in Asafia Primary and High School, Malakpet, are not deprived of the facilities necessary to provide them education.

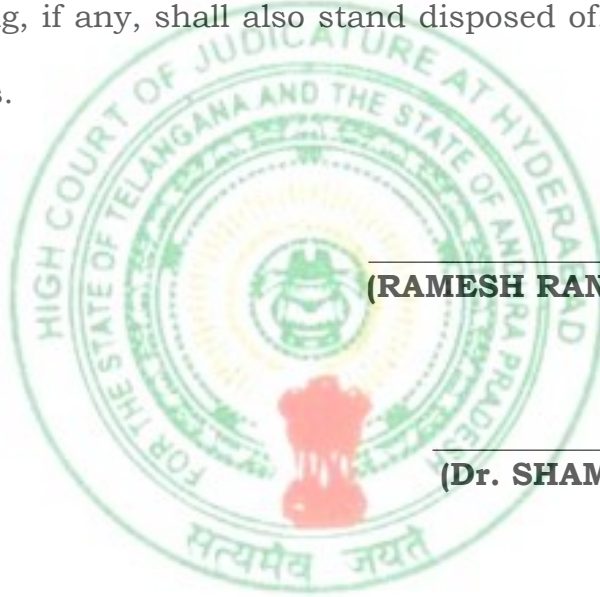
The writ appeal is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

20th April, 2017

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