

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.22822 of 2017

ORDER :

The writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“..to pass an order, direction or a writ particularly in the nature of Writ of Mandamus declaring that the proceedings issued by the respondent NO.2 Board in favour of respondent No.3 vide F.No.27/DJP/ Auc/ MBNR/ 2013-14/ Z-III, dated 29.6.2017, as illegal, arbitrary, in violation of principles of natural justice, unconstitutional, biased, and in violation of interim orders passed in W.P.NO.35711 of 2014, WP 38508 of 2014 and WP No.37216 of 2013. Consequently, this Hon'ble Court may be pleased to direct the respondent No.2 Board to delete ITEMS No.7, 10 and 16, from impugned proceedings vide F.No.27/DJP/ Auc/ MBNR/ 2013-14/ Z-III, dated 29.6.2017, and pass any other order or orders as deemed fit and proper in the circumstance of the case in the interest of justice.”

Heard learned counsel for the petitioner, learned Government Pleader for Social Welfare appearing for respondent No.1, Sri Farhana Azam Khan, learned Standing Counsel, who offers to file vakalat for respondent No.2 from instructions and Sri S.M.Subhan, who offers to file vakalat for the 3rd respondent and stated that already a caveat is filed and perused the prayer in the writ petition with supporting affidavit.

It is not in dispute of the fact that by order of this Court in disposal of W.P.No.35711 of 2014 filed by the self same seven petitioners against respondents 1 and 2 herein, where the prayer to declare the orders contained in memo dated 01.11.2014 issued by the 2nd respondent-Wakf Board as arbitrary and illegal and sought for restoration of orders contained in memo dated 01.03.2012 issued by the 2nd respondent-Wakf Board earlier and on contest by referring to the lis covered by the expression of the Apex Court in Director of Endowments, Government of Hyderabad and others v. Akram Ali (AIR 1956 SC 60) reproducing para-12 of the Constitution Bench expression therein, particularly, on the aspect as to Constitution only guarantees to a citizen such rights as he had at the date it came into force and it does not alter them or add to them; all it guarantees is that he shall not be deprived of such rights as he has except in such ways as the Constitution allows and by the time the Constitution came into force he had no right to immediate possession; the utmost he had was a right to restore possession if and when he established his rights in a Court of law, by allowing the writ petition filed by the petitioners confirming the Nizam resumed the Wakf in question within its absolute power and jurisdiction and ultimately it is observed that there was no order passed recognizing the

petitioners as Mujawars of Dargah. On 06.02.1979, when the petitioners approached the Wakf Board that they did not have any other source of income to maintain their families and requested the Wakf Board appointed them as servants on some monthly remuneration and the Wakf Board appointed them as servants on a monthly salary of Rs.50/- p.m., which was subsequently enhanced from 01.08.1985 to Rs.100/- p.m. and they accepted the said proceedings and never put in issue in any legal proceedings, thereby, they cannot claim the status of Mujawars, but they are only paid servants of the Dargah. From this, it is observed that there is no dispute that the petitioners have executed an affidavit on 23.02.2012 before the Wakf Board agreeing to offer their services standing at a distance of 5 feet away from the Madhar Shareief. Therefore, standing at a distance of 5 feet from the Madhar Shareief, the petitioners could not have performed the services of offering Ghilaf and Chader. Similarly, standing 5 feet away from the Madhar Shareief, they cannot also offer Sandal Paste. Hence, for the present, the petitioners can be permitted to recite verses from the holy Quran and or form any other religious scriptures, as part of service of Fateha Khani and also offer Tabarruk (food) by maintaining 5 feet distance at all times from the

Madhar Shareief. The petitioners can also be permitted to perform Taweez services, but not the rest of the services.

Needless to say, in a subsequent W.P.No.38508 of 2014 which is stated still pending, in disposal of the interim order in WPMP No.48205 of 2014 dated 16.12.2014, it is reiterated the order referred supra in W.P.No.35711 of 2014 dated 03.12.2014 and thereby no further orders are required between the parties *inter se*.

It is in the background of the factual and legal scenario, the present issue covering the impugned proceedings issued by the 2nd respondent-Wakf Board in favour of the 3rd respondent, so called highest bidder, on 29.06.2017, in F.No.27/ AUC/ DJP/ MBNR/ 2013-14/ Z-III, it is pursuant to the E-notification of the sealed tenders issued on 08.06.2017 in relation to certain 17 items and the 3rd respondent to the present writ petition, in whose favour the impugned proceedings issued as he became highest bidder. In fact, among the 17 items none of the items covered by W.P.No.35711 of 2014 dated 03.12.2014 directly involved. Further the very Wakf Board in its proceedings by the Chief Executive Officer-2nd respondent categorically mentioned in the impugned proceedings at page No.3 last para that Sri Shaik Mahmud, Superintendent of Dargah Hzt.Jahangir

Peeran is hereby directed to handover the Hundies and possession except the items covered in W.P.No.35711 of 2014 dated 03.12.2014 to Sri Syed Khaja, contractor, Sri Mohd Ghourse, Inspector Auditor Wakfs, Mahaboobnagar District, Sri Hayyum Khan, R.R.District are hereby directed to be present at the time of handing over charge by the Superintendent of the Dargah on 30.06.2017. It is clear from the order that what are the items covered by the order in W.P.No.35711 of 2014 dated 03.12.2014 are not covered in the auction proceedings enabling the highest bidder for the items in question. The impugment in the present writ petition is that though not directly involved, it is indirectly to take away the right of the petitioners of the Taweez collection, it is incorporated in the public auction notice in favour of the highest bidder-cum-writ petition 3rd respondent as item No.16 Bandish and Bandish and Taweez are one and the same and thereby to that extent of Bandish as part of the auction terms but in terms of the highest bidder and to be directed to be eliminated as it is in conflict and contradiction to the mandate of the order in W.P.No.35711 of 2014.

Whereas, it is the submission of the 3rd respondent vis-à-vis learned Standing Counsel of the Wak Board that Bandish

is different and Taweez is different and only for Bandish, the highest bidder can participate and not for Taweez.

Having regard to the above, the issue is since very limited involved in the writ petition, without keeping the same pending, the writ petition can be disposed of by clarifying in view of the rival contentions, to avoid any apprehension in the minds and further future complications that whatever the Bandish shall not include and interfere with the right of the petitioner to issue Taweez.

Accordingly, the Writ Petition is disposed of. It is needless to say, the other pending writ petitions are required to be decided on own merits.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed. No costs.

Dr. B. SIVA SANKARA RAO, J

Date:17-07-2017

Note:

Issue C.C. in two days.

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DATE: 17.07.2017



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