

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI**

WRIT APPEAL NOs.284 AND 298 OF 2018

COMMON JUDGMENT: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

These two appeals are preferred against the order passed by the Learned Single Judge in I.A. No.1 of 2017 (WVMP No.4342 of 2017 in WP No.27642 of 2017 dated 22.01.2018. The said Writ Petition was filed by the first respondent herein seeking a mandamus to declare the action of the State Government in issuing G.O.Ms. No.31 dated 10.08.2017, notifying the process of election for the A.P. Wakf Board, as illegal, arbitrary, malafide, unconstitutional, and in violation of the Wakf Act, 1995 and the A.P. State Wakf Board Conduct of Election Rules, 1996. A consequential direction was sought to the State of A.P. to issue a fresh notification calling for elections to the A.P. Wakf Board, in consonance with the provisions of the Wakf Act, 1995 and the A.P. State Wakf Board Conduct of Election Rules, 1996.

Initially an interim order was passed on 23.08.2017 directing that, while the election process could go on, the constitution of the Wakf Board, under Section 14 of the Wakf Act, be stayed. Thereafter, both the State Government and the A.P. State Wakf Board filed petitions to vacate the interim order passed on 23.08.2017. The Learned Single Judge, by the order under appeal dated 22.01.2018, modified the earlier interim order, and directed that constitution of the Wakf Board may go on from all other categories, except the category specified in Section 14(1)(b)(ii) of the Act.

In the order under appeal, the Learned Single Judge observed that the issue in the Writ Petition was confined only to reduction of the

representation, in the category of Muslim Members of the State Legislature, from two to one; staying the constitution of the entire Wakf Board may not be valid as it would hamper the functioning of the Wakf Board, and thereby affect the welfare activities required to be implemented by the Wakf Board for the Muslim community; as the issue was only with reference to the composition of the Wakf Board from one particular category, and the Wakf Board comprised of members from several categories, staying the constitution of the entire Wakf Board was not in larger public interest; and, moreover, such composition had no relevance to the issue agitated by the petitioner. The earlier interim order was modified and, while the A.P. Wakf Board was directed to be constituted from all other categories, the constitution of the Board, with a Muslim Member of the State Legislature, was alone stayed. Aggrieved thereby the present appeal.

Both Sri V.S.R. Anjaneyulu, Learned Counsel appearing on behalf of the A.P. State Wakf Board, and Sri R. Raghunandhan, Learned Senior Counsel appearing on behalf of the appellant in W.A. No.284 of 2018, would contend that, since there are six Muslim Members in the A.P. State Legislature (four from the Legislative Assembly and two from the Legislative Council), the appellant in W.A. No.284 of 2018, who belongs to the ruling party which has four muslim members (i.e., two from the Legislative Assembly and two from the Legislative Council), would have been elected anyway as the party in opposition, to which the respondent-writ petitioner belongs, has only two muslim members in the Legislative Assembly; be it one or two seats, the appellant in W.A. No.284 of 2018 would have, and has in fact, been elected as a member of the A.P. State Wakf Board from the category specified in Section 14(1)(b)(ii) of the Act; Parliament has, by enacting Section 14(1),

conferred power on the State Government to fix either one or two members for each of the categories, specified thereunder, as it thought fit; Parliament has not fettered the discretion conferred on the Executive; G.O.Ms. No.25 dated 14.07.2017, whereunder two seats were prescribed for Muslim Members of the State Legislature, was rescinded four days thereafter on 18.07.2017 vide G.O.Ms. No.26 dated 18.07.2017; the validity of G.O.Ms. No.26 dated 18.07.2017 has not been put in issue in the Writ Petition; the subsequent notification, in G.O.Ms. No.31 dated 10.08.2017, has alone be subjected to challenge; as G.O.Ms. No.26 dated 18.07.2017, whereby G.O.Ms. No.25 dated 14.07.2017 was rescinded, has not been subjected to challenge, no reliance can be placed on G.O.Ms. No.25 dated 14.07.2017 to contend that two seats should be earmarked for Muslim Members of the State Legislature; in any event, these are all matters which are required to be examined in the Writ Petition; and since the appellant in W.A. No.284 of 2018 would have been elected, under the category specified under Section 14(1)(b)(ii), irrespective of whether one or two seats are earmarked for muslim members of the State Legislature, the Learned Single Judge was not justified in continuing the stay of constitution of the Wakf Board from the category of muslim members of the State Legislature.

On the other hand Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would submit that the power conferred, under Section 14(1) of the Wakf Act, is to be exercised as a one time measure; it is for the first time, after the present State of Andhra Pradesh came into being on 02.06.2014, that G.O.Ms. No.25 dated 14.07.2017 was issued prescribing two seats for muslim members from the State Legislature; having exercised the

power, the State Government was not entitled to review its order in G.O.Ms. No.25 dated 14.07.2017; no such power of review has been conferred on the State Government under Section 14(1) of the Wakf Act; having exhausted the power under Section 14(1) of the Act, on G.O.Ms. No.25 dated 14.07.2017 being issued, the State Government could not have exercised the power again to reduce the number of seats, earmarked for muslim members of the State Legislature, from two to one; if this Court is of the view that the order under appeal is bereft of reasons, the order under appeal should be set aside and the matter remanded to the Learned Single Judge for his consideration afresh; or, in the alternative, the Learned Single Judge should be directed to hear the Writ Petition finally with utmost expedition, as failure to take up the Writ Petition for hearing at an early date would deprive the respondent-writ petitioner of his right to be elected to the second seat earmarked for muslim members of the State Legislature in terms of Section 14(1)(b)(ii) of the Wakf Act, and thereafter to be elected as the Chairman of the A.P. State Wakf Board.

As noted hereinabove, none of these contentions have been dealt with in the order under appeal. However, setting aside the order under appeal and remitting the matter back to the Learned Single Judge for his consideration afresh, would only result in revival of the earlier interim order dated 23.08.2017, which would mean that the constitution of the A.P. Wakf Board would remain stayed in its entirety, till the vacate stay petition is heard afresh, and is decided in accordance with law. As the main Writ Petition is still pending consideration before the Learned Single Judge, and this appeal is preferred only against the interlocutory order modifying the earlier ad-interim order, we shall examine whether the contentions, urged by

Learned Counsel on either side, *prima-facie* justified the order under appeal being passed.

Section 14 of the Wakf Act, 1995 relates to the composition of the Wakf Board. Under sub-section (1) thereof, the Board for a State shall consists of (a) Chairperson; (b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of (i) Muslim Members of Parliament from the State, (ii) Muslim Members of the State Legislature, (iii) Muslim Members of the Bar Council of the concerned State or Union territory; and mutawallis of the Auqaf having an annual income of Rupees one lakh and above.

The dispute, in the present case, relates to whether there should be one or two members in the Wakf Board from the category of muslim members of the State Legislature. While the State Government had initially issued G.O.Ms. No.25 dated 14.07.2017, prescribing the number of muslim members from the State Legislature, to be represented in the Wakf Board, as two, this notification was rescinded four days thereafter vide G.O.Ms.No.26 dated 18.07.2017, and a fresh notification was issued in G.O.Ms. No.31 dated 10.08.2017 reducing the representation of muslim members of the State Legislature, in the A.P. State Wakf Board, to one. The power to issue the notification, in G.O.Ms. No.31 dated 10.08.2017, was exercised by the State Government under Section 14(1) of the Wakf Act which uses the words “*one and not more than two members, as the State Government may think fit*”. On a plain reading of Section 14(1)(b) of the Act it does appear, *prima-facie*, that the discretion conferred on the State Government to prescribe one or two members, from any of the categories of clauses (i) to (iv) thereunder, is “*if it thinks fit*”, and is unfettered.

The contention that the State Government, having issued G.O.Ms. No.25 dated 14.07.2017, cannot review its order is only to be noted to be rejected. The power exercised by the State Government, under Section 14(1)(b) of the Act, is a statutory power, and not a judicial or quasi-judicial power. Unlike judicial or quasi-judicial orders which cannot be reviewed unless the statute specifically confers the power of review, no such limitation is applicable to a notification issued in the exercise of a statutory power. Section 21 of the General Clauses Act stipulates that where, by any Central Act, a power to issue a notification or order is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to rescind any notification or order so issued. The power, conferred by the Wakf Act, 1995 which is a Central Act, to issue a notification, specifying the number of members in the Wakf Board, from the category of muslim members of the State Legislature, inheres within it the power to rescind any such order/notification, and such a power, in the absence of any prescription to the contrary in the Wakf Act, is referable to Section 21 of the General Clauses Act. It is in exercise of such a power that the State Government, by G.O.Ms. No.26 dated 18.07.2017, rescinded G.O.Ms. No.25 dated 14.07.2017. As the notification, in G.O.Ms. No.26 dated 18.07.2017, has not even been subjected to challenge in the Writ Petition, the respondent-writ petitioner cannot be heard to contend that the said notification is illegal, since no order carries the brand of invalidity on its forehead, and would continue to remain in force unless declared invalid by a competent Court.

Even otherwise, be it one or two seats earmarked for members of the State Legislature in the A.P. Wakf Board, the appellant in W.A.

No.284 of 2018, who belongs to the ruling party which has four Muslim Members in the State Legislature as against two from the party in opposition to which the respondent-writ petitioner belongs, would have been elected as a Member of the State Wakf Board, even if the respondent-writ petitioner had contested the elections which he chose not to. The very fact that the respondent-writ petitioner contends that two seats should be earmarked, for muslim members from the State Legislature, in the A.P. Wakf Board shows that his claim to become a member of the A.P. Wakf Board is dependant on two seats being earmarked for such a category, instead of one. It is because only one seat was prescribed for this category, vide G.O.Ms.No.31 dated 10.08.2017, that the respondent-writ petitioner did not even contest the elections, evidently because he knew that one seat being earmarked, for muslim members of the State Legislation, would only result in the appellant in W.A.No.284 of 2018 being elected. It is only if two seats had been earmarked for muslim members of the State Legislature, would there be a possibility of the respondent-writ petitioner also being elected, along with the appellant in W.A. No.284 of 2018, as a member of the A.P. Wakf Board.

We see no reason, therefore, to deny the appellant in W.A. No.284 of 2018, who was elected unopposed as a member of the A.P. Wakf Board from the category of Muslim Members of the State Legislature, from being part of the Wakf Board. The order under appeal is modified and the election of the appellant in W.A. No.284 of 2018, as a member of the A.P. Wakf Board, shall be subject to the result of W.P. No.27642 of 2017. As the substantive Writ Petition is still pending adjudication before the Learned Single Judge, suffice it to direct the appellant in W.A. No.298 of 2018 (the A.P. Wakf Board) to issue proceedings making

it clear that, inclusion of the appellant in W.A. No.284 of 2018 as a member of the A.P. Wakf Board, shall be subject to the result of W.P. No.27642 of 2017.

Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would request this Court to atleast direct the Learned Single Judge to hear the Writ Petition at the earliest. We have no reason to doubt that, on such a request being made by the Learned Senior Counsel, appearing on behalf of the respondent-writ petitioner, the Learned Single Judge would give such a request its due consideration. Needless to state that, when the Writ Petition is taken up for final hearing, the Learned Single Judge shall hear and adjudicate the same on its merits uninfluenced by the observations made by us in this order.

Both the appeals are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 26.02.2018.

MRKR