

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No. 758 of 2018

and

Writ Petition No. 16580 of 2018

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

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. 16580 of 2018 dated 2.5.2018 refusing to grant an interim order, and in directing that the Writ Petition be posted along with W.P. No. 4548 of 2015 on 4.6.2018.

The 8th respondent herein filed W.P. No.4548 of 2015 questioning the proceedings of the Telangana State Wakf Board in continuing the erstwhile Managing Committee under President Janab Sk. Pasha. In the interim order passed by him, in W.P.M.P. No. 6028 of 2015 in W.P. No. 4548 of 2015 dated 4.3.2015, the learned Single Judge noted the submission of the Wakf Board that initially a Committee was appointed on 16.6.2014 for a short period of six months with the specific understanding that a new Managing Committee would be constituted after conducting elections under Section 18 of the Wakf Act, 1995; however, on account of paucity of time, proceedings dated 29.1.2015 were issued. The learned Single Judge observed that, *prima facie*, constitution of the Committee on 29.1.2015 was against the regulations issued under GO Ms. No.74 dated 20.11.2010; and, therefore, constitution of the Committee through an Executive Order dated 29.1.2015 was *per se* ultra vires. In that view of the matter, the order of interim suspension of the proceedings dated 29.1.2015 was passed. The learned Single Judge made it clear that the said order would not preclude the respondent-Wakf Board from taking necessary steps for conducting elections, and to constitute a new

Committee in accordance with Section 5 of the Wakf Act (evidently Regulation 5 of the Regulations) and GO Ms. No. 74 dated 20.11.2010. The interim order of suspension of the proceedings dated 29.1.2015 continues to remain in force even as on date and, as a result, the erstwhile Managing Committee, represented by its President Janab Sk. Pasha, cannot continue to function as the Managing Committee of the subject Masjid.

Thereafter, the Chief Executive Officer of the Telangana State Wakf Board issued proceedings dated 21.11.2016 constituting another Managing Committee, with Janab M.A. Majeed Lateef as its President, to hold office for a period of two years. The 8th respondent herein filed a Contempt Case alleging violation of the order passed by the learned Single Judge in WPMP. No. 6028 of 2018 in W.P. No. 4548 of 2015 dated 4.3.2015. Apprehending action being taken against them in C.C. No. 2553 of 2016, the Chief Executive Officer of the Telangana State Wakf Board issued proceedings dated 24.1.2018 rescinding the earlier proceedings, whereby the Committee was constituted on 21.11.2016 for a period of two years. This order was passed on 24.1.2018, admittedly, without notice to the appellant-writ petitioners and without assigning any reasons why the two year term of Office of the Managing Committee should be rescinded after two months when their term of office is for two years.

Questioning the order of the Chief Executive Officer of the Wakf Board dated 24.1.2018, the appellant-writ petitioners filed W.P. No. 16580 of 2018 and, in the order under appeal dated 02.05.2018, the learned Single Judge observed that earlier this Court, in W.P. No. 4548 of 2015, had found constitution of the Committee contrary to the Regulations in GO Ms. No.74 dated 20.11.2010, had suspended constitution of the Committee, and had granted liberty to the Wakf Board to take necessary steps for conducting elections and constitute a new Committee in accordance with Section 5 of the Wakf Act and GO Ms. No. 74 dated

20.11.2010; the petitioner in W.P. No. 4548 of 2015 had alleged that, contrary to the directions of the Court, a new Committee was constituted without holding elections, and contempt proceedings were initiated; in view of the same, orders were passed suspending the Committee on 4.3.2015, and the election process was set in motion; and as the action of the authorities was, *prima facie*, in compliance with the directions issued by this Court, no orders could be passed in the Writ Petition.

As noted hereinabove the learned Single Judge, by his order in WPMP No. 6028 of 2015 in W.P. No. 45448 of 2015 dated 4.3.2015, had suspended the earlier proceedings dated 29.1.2015 constituting a Committee. The learned Single Judge has, in the said order, also observed that the order did not preclude the Wakf Board from taking necessary steps for conducting elections, and constituting a new Committee in accordance with Section 5 of the Wakf Act and GO Ms. No. 74 dated 20.11.2010. The Liberty granted to the Wakf Board to conduct elections cannot be construed as a direction to the Wakf Board to do so. The question, whether or not the Committee constituted by the Wakf Board, in its proceedings dated 21.11.2016, was in accordance with law, could only have been examined in independent legal proceedings wherein the said order has been subjected to challenge. We may not be understood to have held that the Wakf Board is powerless to rescind the two year term of office of the Committee constituted by it earlier. However, exercise of such power should be for just and valid reasons, and not on the whims and fancies of the Chief Executive Officer of the Wakf Board.

In the exercise of its power under Section 110 of the Wakf Act, 1995 (hereinafter referred to as “the Act”), the Andhra Pradesh Wakfs Managing Committee (Constitutions, Functions and Duties) Regulations, 2009 (hereinafter referred to as “the Regulations”) were notified in GO Ms. No. 74 dated 20.11.2010, and published in the A.P. Gazette dated 15.2.2010.

Regulation 5 relates to the method of constitution of Managing Committee and, thereunder, the Managing Committee for a wakf/wakf institution shall be constituted in the following manner.

- (i) By approving the panel unanimously selected by the Mussalies and certified by the Inspector Auditor of the Board;
- (ii) In the absence of unanimous panel through election from among the mussalies of the Wakf/Wakf Institution conducted under the control and supervision of Inspector Auditor of the Board.

As observed by the learned Single Judge, in the interim order dated 4.3.2015 in WPMP No. 6028 of 2015 in W.P. No.4548 of 2015, it was open to the Wakf Board to take steps to conduct elections in accordance with Section 5 of the Act and GO Ms. No. 74 dated 20.11.2010. Section 5 of the Act relates to the publication of list of Auqaf, and has nothing to do with the conduct of elections to a Managing Committee. The learned Single Judge was evidently referring to Regulation 5 of the Regulations in GO Ms. No.74 dated 20.11.2010 which stipulates that an election is required to be conducted only in the absence of a panel unanimously selected by the Mussalies. The directions which this Court would issue, in the exercise of its jurisdiction under Article 226 of the Constitution, is only in accordance with law and the interim order of the learned Single Judge cannot, therefore, be so construed as requiring the Wakf Board to conduct elections even if a panel unanimously selected by the Mussalies has been approved by the Wakf Board.

We see no reason, however, to dwell on this aspect any further as appointment of the appellant-Committee has not been subjected to challenge in these writ proceedings. On the other hand, it is the appellant-Committee, whose term of office has been brought to an end mid-term, which has invoked the jurisdiction of this Court aggrieved by the order of the Wakf Board dated 24.01.2018.

The only reason discernible, on a bare reading of the proceedings dated 24.1.2018, is that the 8th respondent had filed C.C. No. 2553 of 2016; and when the matter was placed before the Board, the Board resolved to rescind the order issued in its proceedings dated 21.11.2016. Mere filing of a Contempt Case would not justify the Wakf Board rescinding its earlier notification. It is evident, from the impugned order dated 24.01.2018, that the appellants were neither put on notice, nor were they given an opportunity of being heard, before the order was passed. The order of the Wakf Board must therefore be, and is accordingly, set aside as bereft of reasons and as an order passed in violation of principles of natural justice.

The order now passed by us shall not disable the Wakf Board, if it so chooses, from taking action to rescind the term of Office of the appellant-Committee after putting the Committee on notice, and after giving them an opportunity of being heard. This order shall also not disable the 8th respondent, if he so chooses, from questioning the validity of the proceedings of the Chief Executive Officer of the Wakf Board dated 21.11.2016 constituting a Committee to hold office for a period of two years. It is made clear that the appellant-Committee is entitled to hold office, in terms of the proceedings of the Chief Executive Officer dated 21.11.2016, only till 20.11.2018, and not thereafter.

Sri L. Gopinath, learned counsel for the appellants, learned Government Pleader for Social Welfare (Telangana) and Mr. Farhan Azam Khan, learned counsel for the 8th respondent, agree that, in the light of the order now passed by us, the cause in the present Writ Petition does not survive necessitating any further adjudication by this Court.

Both the Writ Appeal and the Writ Petition are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

7th June, 2018

Note:

Furnish c.c. by 12.6.2018.

b/o

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