

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SMT. JUSTICE T.RAJANI

WRIT APPEAL No.1210 of 2018
AND
WRIT PETITION No.32545 of 2018

COMMON JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

The appeal is against an interlocutory order issued by the learned single Judge in the course of the Writ Petition.

2. We have heard the learned counsel for the appellants, who are respondents 3 to 7 in the Writ Petition; learned counsel for the unofficial respondent, who is the writ petitioner; the learned counsel for the Andhra Pradesh State Wakf Board as well as the learned counsel for the State of Andhra Pradesh.

3. The issues in hand relate to a Wakf in Guntur District. It is not in dispute that the writ petitioner is the Wakf, represented by the Muthawalli, who has been appointed, as such, as per the proceedings of the Wakf Board issued on 01.04.2016.

4. From Ex.R2 issued by the Andhra Pradesh State Wakf Board through its Chief Executive Officer, it is seen that a representation was placed on 06.09.2018 by one of the private respondents before the Chairperson of the Wakf Board with a request for permission to observe Muharrum for the year 2018 with the members enumerated in that representation utilizing his own funds. That was considered by the Chairperson of the Wakf Board and it was allowed, thereby permitting the persons empanelled in the representation to observe Muharrum in the religious institution utilizing their own funds "to

avoid complications”. The Chief Executive Officer has communicated that decision to the Muthawalli, who, in turn, filed the Writ Petition.

5. Learned single Judge, in the impugned order, noticed that the purpose for which the unofficial respondents in the Writ Petition were asked to observe Muharrum along with the petitioner is not mentioned in the proceedings impugned in the Writ Petition and the reasons for appointing the proposed panel of persons for observing Muharrum were also not indicated in those proceedings. This view of the learned single Judge was founded on the undisputed fact that the writ petitioner is still the Muthawalli of the subject Mosque.

6. The impugned order being an interlocutory order during the course of the Writ Petition and because it discloses reasons which demonstrate that the learned Judge had duly applied mind to come to the conclusions in the order, we would refuse to interfere on that count itself.

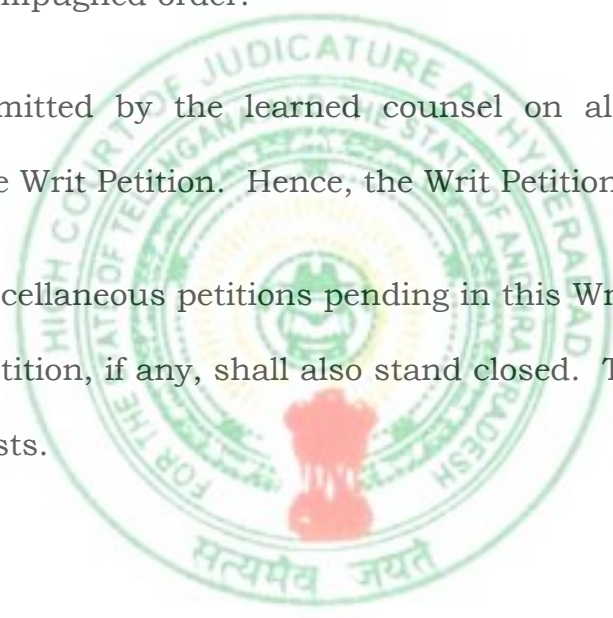
7. Be that as it may, comity in religious institutions is absolutely essential to be maintained. The very purpose of having regulatory modes is to ensure that society lives in peace. We do not see any reason why a group of persons or a few of them should be permitted to observe Muharrum “with their own funds” even if it is to be along with the Muthawalli. That is a matter to be left to the Muthawalli to take the lead role. The Muthawalli is not merely a person in control of the material aspects of a Mosque. The predominant content of practice and matters connected with religious tenets are also within the domain of the Muthawalli, subject to the terms of the wakf. Therefore, the only way of looking at the issue in hand is to say that the Muthawalli would not prevent any particular person who may

join in observing Muharrum and participating in the functions in connection therewith. The question whether a particular person is desirous of contributing any amount and whether such amount is to be utilized for the purpose of observance of Muharrum is a matter which would be within the domain of the Muthawalli. However, that there should not be any hostile exclusion of funds which would flow into the performance of Mosque without maintaining any clear identity, except for the purpose of account.

8. With the aforesaid clarifications, the Writ Appeal is closed affirming the impugned order.

9. As submitted by the learned counsel on all sides, nothing survives in the Writ Petition. Hence, the Writ Petition is also closed.

The miscellaneous petitions pending in this Writ Appeal as well as the Writ Petition, if any, shall also stand closed. There shall be no order as to costs.



THOTTATHIL B. RADHAKRISHNAN, CJ

T.RAJANI, J

19.09.2018
vs