

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.29536 & 33869 OF 2018

DATE: 11.03.2019

WP No.29536 of 2018:

Between:

Managing Committee Masjid-E-Ek Khana
Jame Masjid Mohammedi, Kishanbagh,
Hyderabad, rep. by its President,
Mr Mohammed Nooruddin Ghori,
S/o Mohammed Hussain Ghori,
Aged about 68 years, Occ:Pensioner,
R/o H.No.19529/3/1/1, Kishanbagh,
Hyderabad and another.

.... Petitioners

and

The State of Telangana, rep. by its Principal Secretary,
Minorities and Welfare Department, Secretariat at
Hyderabad and others.

..... Respondents

This Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOS.29536 & 33869 OF 2018

COMMON ORDER:

In these two writ petitions, the issue concerns appointment of Managing Committee to Masjid-e-Ek-Khana Jame Masjid Mohammedi / Jam-E-Jasjid Mohammedi (hereinafter referred to Wakf Institution). Therefore the above two writ petitions are disposed of by this common order.

2. In W.P.No.29536 of 2018, petitioners challenge the order of the Chief Executive Officer of Wakf Board dated 16.08.2018 appointing new Managing Committee to the Wakf Institution, which committee is arrayed as 3rd respondent.

3. In W.P.No.33869 of 2018, petitioners pray to issue declaration not extending the term of the petitioner No.1 Managing Committee on expiry of term even though representation was made on 05.01.2018 and report of Inspector Auditor dated 27.02.2018 was in their favour, as illegal and seeks direction to extend the term of petitioner no.1 Managing Committee.

4. Briefly noted the facts relevant for the decision are as under:

On 09.02.2016, the Chief Executive Officer, Telangana State Wakf Board, issued orders appointing Eleven Member Committee including the 2nd petitioner in W.P.No.29536 of 2018 as General Secretary. The term of this committee was for two years. The term of the said committee expired in February, 2018 and is not extended further. According to the petitioners, on 05.01.2018, the existing Managing Committee represented for extension of their term for further period. It appears, the Inspector Auditor

recommended for extension of the earlier Managing Committee. According to the petitioners, the Member of Parliament representing Hyderabad addressed a letter dated 03.02.2018 to the Chief Executive Officer suggesting appointment of a new Managing Committee with Sri Syed Ismail Mohd.Shah as its President. Based on the said letter, Sri Syed Ismail Mohd.Shah made a representation to the Wakf Board on 10.04.2018 to appoint new Managing Committee, headed by the said person. Ignoring the request of previous managing committee for renewal and under pressure from local Member of Parliament, the Chief Executive Officer passed orders on 16.08.2018 appointing new Managing Committee. This order of appointment of new Managing Committee is under challenge in W.P.No.29536 of 2018.

5. The appointment of new managing committee and not renewing the term of earlier managing committee for further period is primarily challenged on the following grounds.

5.1. According to the learned counsel for petitioners, as existing managing committee resolved to renew its term, and requested the Wakf Board to renew, it is incumbent on the Wakf Board to renew the term and without considering their request, no new committee could have been appointed. He further contended that the appointment of new managing committee is made under the influence of Member of Parliament. The information obtained under the Right to Information Act clearly disclose that the letter addressed by the Member of Parliament; consequential representation by Syed Ismail Mohd.Shah and consequential

decision by the Wakf Board are in sequence and, therefore, the order is liable to be set aside on this ground alone.

5.2. It is further case of the petitioners that earlier when the Managing committee was appointed by the orders dated 09.02.2016, Syed Ismail Mohd. Shah filed W.P.No.12059 of 2016 challenging the said appointment. The claim of petitioner therein was opposed by the Wakf Board. The Wakf Board has taken clear stand that petitioner therein has no manner of right to claim himself to be appointed as President. Wakf Board averred that neither he has the President nor Muthawalli of the Masjid and is not even Mussalli of the Mosque as he is not a local resident of the area, where the Mosque is situated. Having taken such stand against claim of Syed Ismail Mohd.Shah, Wakf Board could not have appointed him as President of the Managing Committee and the said action smacks of arbitrariness on the face of it and clearly manifest that appointment is not *bona fide*, and is because of political influence.

5.3. According to the learned counsel, it is also averred by the respondent-Board in their counter-affidavit in the said writ petition that Mussalliees have elected the Managing Committee and they have been looking after the affairs of Masjid and therefore representation was made by the local Muslims on 15.12.2015 requesting appointment of said Managing Committee and consequently the Board has appointed Managing Committee on 09.02.2016. He would therefore submit that Managing Committee earlier appointed on 09.02.2016 was in pursuant to the election and, therefore, the term of said Managing Committee has to be

automatically renewed or in the alternative to conduct elections to elect new Managing Committee, but cannot nominate another Managing Committee and it is illegal.

5.4. Learned counsel also sought to draw attention to correspondence, the suits instituted before the Wakf Tribunal and averments made in the affidavit to contend that as the incumbent Managing Committee was taken stern action against the defaulters in payment of rents of Wakf Institution in occupation by way of lease or licence and misuse of lease or licence granted to them and has also instituted five suits in the Wakf Tribunal against the tenants and they are pending. Because of all this, Sri Syed Ismail Mohd.Shah bore grudge against then existing committee and tried to get into the Managing Committee only to thwart attempts made by the earlier Managing Committee to protect the interest of Wakf Institution.

6. The learned standing counsel representing the Wakf Board as well as learned counsel representing 3rd respondent in W.P.No.29536 of 2018 raised preliminary objection on maintainability of the writ petition in view of the provisions contained in Section 83 of the Wakf Act, where under petitioners have an efficacious and effective remedy before the Wakf Tribunal and, therefore, writ petition is not maintainable. In support of the said contention, they placed reliance on the decision of this Court dated 15.11.2018 made in W.P.No.38632 of 2018, affirmed by the Division Bench. They have also defended the decision of Wakf Board to appoint a new Managing Committee. Learned counsel for 3rd respondent urged that due to interim order of this Court,

Administrative functioning of Wakf Institution paralyzed. According to learned counsel, Section 18 do not envisage renewal of existing committee. The petitioner committee was also nominated and not elected. The tenure of committee expired in February, 2018. Therefore, there was no committee and the Board has to appoint a new committee.

7. On the issue of alternative remedy, learned counsel for petitioners would submit that petitioners need not avail the alternative remedy as the appointment of the present managing committee is made under political influence and the same is *per se* illegal and, therefore, petitioners need not be relegated to avail alternative remedy. In support of the said contention, learned counsel placed reliance on the decision of this Court in **Intezami Committee Mazid-E-Osmania, rep.by its General Secretary vs. A.P. State Wakf Board, rep.by its Secretary and another**¹. By placing reliance on the decision of the Supreme Court in **Harbanslal Sahnia and another vs. Indian Oil Corporation Limited and others**², he would contend that Rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion and in appropriate case, writ Court can entertain the writ petition without subjecting the petitioners to avail alternative remedy. One of the criteria laid down in the said judgment for entertaining the writ petition is where the orders or proceedings are without jurisdiction. He would submit that as the order under challenge is based on the influence

¹ 1996 (2) ALD 661 (D.B.)

² (2003) 2 SCC 107

of Politician, the order can be classified as without jurisdiction and competence and, therefore, writ is maintainable.

8. Before considering the issue of maintainability of writ petition, this Court deems it necessary to record the following observations on institution of these Writ Petitions.

9. W.P.No.29536 of 2018 is filed challenging the order dated 16.08.2018 appointing new Managing Committee. While the said writ petition is pending, the same petitioners filed W.P.No.33869 of 2018. In the said writ petition, grievance of petitioners is against not extending the term of Managing Committee earlier appointed vide proceedings dated 09.02.2016 and seeks direction to extend the term. In the second writ petition, the Managing Committee appointed vide orders dated 16.08.2018 is not arrayed as respondent. No reasons are assigned as to why this writ petition is instituted when the earlier writ petition is pending. Petitioners are not entitled to directions prayed in W.P.No.33869 of 2018 unless the order appointing the new Managing Committee on 16.08.2018 is set aside. Petitioners were aware of appointment of new committee, and have challenged the appointment of new Managing Committee in W.P.No.29536 of 2018. Except for the prayer, the pleadings are similar in both the writ petitions.

10. Secondly, the concerned Wakf Institution was earlier known as Masjid-E-ek-Khana, later came to be called Jam-e-Masjid Mohammedi. For each Wakf Institution, the Wakf Board can appoint Managing Committee, by exercising the powers under Section 18 of the Act, and the Managing Committee is headed by the President and other members. Thus, Wakf Institution is the

same and there will be a Managing Committee. To look after the affairs of the Wakf Institution, but members of the Managing Committee can be changed by the Wakf Board. In the array of parties in W.P.No.29536 of 2018, first petitioner is the Managing Committee and Wakf Institution mentioned as Masjid-e-Ek-Khana Jame Masjid Mohammedi, whereas the Managing Committee of Jam-e-Masjid Mohammedi is shown as 3rd respondent. In other words, first petitioner and 3rd respondent are one and the same. The grievance can be in between two individuals, who were members of the Managing Committee, whose term expired and sought for renewal vis-à-vis, the new members appointed on 16.08.2018. Thus, there cannot be same organization as petitioner and respondent.

11. Further none of the members of the managing committee are arrayed as respondents, whereas the relief sought by the petitioners, if granted, would affect their further continuation in the Office.

12. Notwithstanding above infirmities noticed, Court is considering the issue. Whether the writ petitions are maintainable with reference to appointment of Managing Committee of the Wakf Institution and parties be relegated to avail remedy under the Wakf Act.

13. This issue is no more *res integra* in view of the decision in W.P.No.38632 of 2018. In the said writ petition, the proceedings of the Chief Executive Officer dated 26.04.2016 appointing the deponent as Mutawalli with certain conditions and further proceedings of the Chief Executive Officer of the Wakf Board dated

24.09.2018, where under the Executive Officer was appointed to the petitioner-institution and the request to grant finance power/status of Mutawalli was rejected. On behalf of A.P. Wakf Board objection was raised on maintainability of writ petition in view of the availability of remedy under Section 83 of the Wakf Act before the duly constituted Wakf Tribunal.

14. On due consideration of the provisions of the Wakf Act, 1995 and the decisions of the Hon'ble Supreme Court, this Court held,

“14. A bare reading of Section 83 of the Act, 1995 would make it clear that jurisdiction vested in the Wakf Tribunal is very wide and encompasses all aspects concerning Wakf matters. It empowers the Wakf Tribunal to adjudicate on all disputes flowing out of the provisions of the Act, 1995. It vests all powers exercisable by Civil Court. It is headed by judicial officer of the rank of District Judge. This Section provides enough safeguards for the aggrieved person to seek redress of his grievance. Section 83 of the Act, 1995 also provides remedy before this Court against the decisions made by the Wakf Tribunal.

15. The Wakf Tribunal is the Court of first instance (**L.Chandra Kumar vs. Union of India and others**³), where aggrieved person has to agitate his grievance and if he is aggrieved by the decision of Wakf Tribunal, he can come before this Court under proviso to Section 83 (9) of the Act, 1995.

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19. A Mutawalli/person interested in the Wakf can file application aggrieved by an order made under the Act. It is contended that financial powers of Mutawalli are withdrawn and illegally Executive Officer is appointed. The orders impugned in this case are made by the Chief Executive Officer/Chairperson in exercise of powers vested in them by the Act. It is crystal clear that Wakf Tribunal

³ (1997) 3 SCC 261

is competent to deal with issues agitated in this writ petition. The remedy provided under Section 83 is an effective and efficacious remedy and an aggrieved person has to avail the said remedy before invoking the jurisdiction of this Court.”

15. This Court has also considered the scope of writ remedy when alternative remedy is available to an aggrieved person. Considering the precedent decisions, particularly with reference to the jurisdiction of Wakf Tribunal as held by the Supreme Court in **Board of Wakf, West Bengal v. Anis Fatima Begum and another**⁴, this Court held that Wakf Tribunal is an effective judicial forum to seek redress of grievance and aggrieved person has to avail the remedy before Wakf Tribunal.

16. The decision of learned single Judge is affirmed by the Division Bench in W.A.No.1617of 2018.

17. In W.P.No.29536 of 2018, petitioners are assailing the order of the Chief Executive Officer dated 16.08.2018 appointing new Managing Committee to the Wakf Institution, made in consequent to the decision of the Wakf Board in exercise of powers vested in the Wakf Board under Section 18 of the Act. This is an order made under the Wakf Act. The prayer in W.P.No.33869 of 2018 is consequential to the prayer in W.P.No.29536 of 2018. As noted by this Court in W.P.No.38632 of 2018, Wakf Tribunal has jurisdiction to adjudicate all disputes on issues including a decision made by the Wakf Board and orders passed by the Chief Executive Officer in exercise of power vested in them under the Act. It is the Court of first instance in all matters arising out of

⁴ 2011 (1) ALD 61 (SC)

Wakf Act, and concerning Wakf Institution. Therefore, petitioners have to avail remedy provided by Section 83 of the Wakf Act.

18. Learned counsel for petitioners sought to emphasize that Syed Ismail Mohd.Shah challenged the orders of the Wakf Board dated 09.02.2016 appointing managing committee, headed by Sri Mohammed Nooruddin Ghorri in W.P.No.12059 of 2016. The Wakf Board opposed the prayer of the petitioner therein i.e., the President of the present managing committee contending that he is not a local Mussali and, therefore, is not entitled to be appointed. In view of their categorical stand opposing the claim of Syed Ismail Mohd.Shah, the Board could not have appointed new managing committee headed by him and, therefore, it is *ex facie* illegal. The orders of the Chief Executive Officer dated 16.08.2018 appointing new managing committee is made in exercise of powers vested under Section 18 of the Wakf Act. When the managing committee comprising of President and 10 other members including Vice-President, General Secretary, Joint Secretary, and Treasurer, even assuming what is contended by the petitioners is true regarding the status of Syed Ismail Mohd.Shah as President, his appointment may be vitiated on that ground, but on that ground appointment of other committee members cannot vitiate. Further, there may be changed circumstances with reference to the status of Syed Ismail Mohd.Shah, which is a question of fact that can be gone into only after relevant evidence is laid. The Wakf Tribunal is competent to record the evidence, oral and documentary and to consider the issue on due evaluation of evidence brought on record. On the face of it, the orders of the Chief Executive Officer, impugned in this writ petition, dated 16.08.2018 cannot be set

aside on ground urged by petitioner, and matter requires detailed consideration.

19. It is further contention of petitioners that local Member of Parliament influenced the decision making process of the Wakf Board annulling the claim of the out going committee for renewal of their term is again question of fact that can be gone into by Wakf Tribunal. It appears that there was a letter written by the Member of Parliament, but there is no reference to the said letter in the order impugned. What is required to be seen is whether there was independent application of mind, and issue of appointment of new Managing Committee was objectively considered by the Board. Merely because there was a recommendation by the Member of Parliament, *per se*, may not vitiate the decision, if decision making process was proper and there was due consideration of the issue. This again is question of fact that can be gone into by Wakf Tribunal after relevant material is placed on record of the Wakf Tribunal. The Wakf Tribunal is competent to evaluate the material on record to arrive at appropriate decision and it is also open to the petitioners to raise all the contentions as urged herein before the Wakf Tribunal.

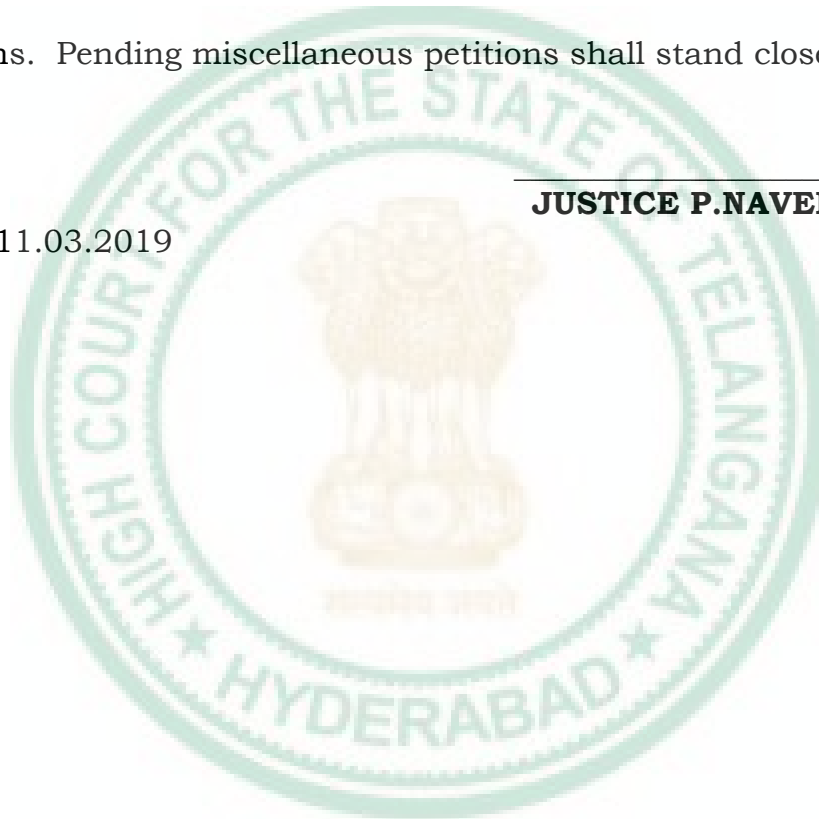
20. At this stage, I am reminded of the law declared by the Supreme Court in **Anis Fatima Begum** (supra). Supreme Court held:

“10. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India.”

21. Having regard to the fact that there is duly constituted Wakf Tribunal, which is vested with wide powers to deal with all the issues arising out of the Wakf Act, the Court is not inclined to entertain the Writ Petitions. Writ Petitions are accordingly dismissed, leaving it open to petitioners to approach the Wakf Tribunal and to raise all the pleas available in law including the prayers sought in these two Writ Petitions. It is made clear that there is no expression of opinion on merits. The discussion herein above is for consideration of issue of maintainability of Writ Petitions. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 11.03.2019
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WRIT PETITION NOs.29536 & 33869 OF 2018

Date: 11.03.2019

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