

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(227) No.401 of 2020**

- Mohd. Salim Ashrafi S/o Hafiz Abdul Gaffar Aged About 69 Years
Former Chairman Of C.G. State Waqf Board, Raipur, District- Raipur,
Chhattisgarh, R/o Gaffur Manzil, Rajbandha Marg, Moudhapra, Post
And Tehsil- Raipur, District- Raipur, Chhattisgarh

---- Petitioner***Versus***

1. State Of Chhattisgarh Through Secretary, Scheduled Caste And
Scheduled Tribe Welfare Department (Minority), Mantralaya, Mahanadi
Bhawan, Naya Raipur, District- Raipur, Chhattisgarh
2. Commissioner Scheduled Caste And Scheduled Tribe Welfare
Department, Indrawati Bhawan, Naya Raipur, District- Raipur,
Chhattisgarh
3. Senior Superintendent Of Police Raipur (Police Department),
Collectorate, Raipur, District- Raipur, Chhattisgarh
4. Dr. S. Zaheeruddin, Ex Chief Executive Officer, Chhattisgarh State Waqf
Board Raipur And Veterinary Assistant Surgeon, Incharge- Deputy
Director, Veterinary Services, District- Sukma, Chhattisgarh
5. Dr. S.A. Farooqui Chief Executive Officer, Chhattisgarh State Waqf
Board Raipur, Infront Of Ambedkar Statue, Near Collectorate Chowk
Raipur, District- Raipur, Chhattisgarh
6. Chhattisgarh State Waqf Board Through Its Chief Executive Officer,
Infront Of Ambedkar Statue, Near Collectorate Chowk Raipur, District-
Raipur, Chhattisgarh
7. Faisal Rizvi Member, Chhattisgarh State Waqf Board, Banstaal, Raipur,
Tehsil And District- Raipur, Chhattisgarh
8. Mir Qadir Member, Chhattisgarh State Waqf Board, Nehru Nagar
Raipur, Tehsil And District- Raipur, Chhattisgarh
9. Sarvar Ali Member, Chhattisgarh State Waqf Board, Sharda Para,
Kanker, Tehsil And District- Kanker, Chhattisgarh

---- Respondents

For Petitioner	: Mr. Kishore Bhaduri, Advocate.
For respondent No.1 to 3	: Mr. D.P. Singh, Dy.A.G.
For respondent No.4	: Mr. Kshitij Sharma, Advocate.
For respondent No.6	: Mr. Malay Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

01-10-2020

Heard.

1. Learned counsel for the respondent No.6 has made a preliminary objection that the impugned order which is passed by the State Waqf Tribunal, Raipur on an application filed under Section 83(2) of the Waqf Act, 1995 (hereinafter referred to as 'the Act, 1995') is not maintainable.
2. Learned counsel for both the parties have agreed to make submissions on this question raised by respondent No.6 before proceeding further with the present writ petition.
3. Learned counsel for respondent No.6 submits that the petitioner filed application under Section 83(2) of the Wakf Act, 1995, the application was decided by the impugned order dated 13.07.2020 and the application was dismissed. It is submitted that the petitioner has remedy available to file a revision petition in accordance with the provision under Section 83(9) of Act 1995. Therefore, the petition under Article 227 of Constitution of India is not maintainable.
4. Learned counsel for petitioner submits that the provision under Section 83(9) of Act, 1995 cannot be read in isolation. The whole scheme under Section 83 of the Act, 1995 has to be taken into consideration. The learned Tribunal has simply refused to exercise the jurisdiction vested in it under Section 83(2) of the Act, 1995, therefore, in such a case, the petitioner is left with no option but to approach this Court praying for exercise of supervisory jurisdiction. The facts present in the application were not at all considered by the Tribunal, therefore, the impugned order is not an order in any sense. Further, the Waqf Board has also denied to register the application under Section 83(2) of Act, 1995 as a proceeding before it.

5. Reliance has been placed on the judgment of Supreme Court in **Achutananda Baidya Vs. Prafulla Kumar Gayen and others** reported in **(1997) 5 SCC 76**, in which the Supreme Court has held that the power of superintendence of the High Court under Article 227 of the Constitution of India is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review and in exercise of the same, the High Court has to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. In this case, the Waqf Board has clearly failed to exercise the jurisdiction. The Learned counsel for the petitioner has also placed reliance on the judgment of Guwahati High Court in the case of **Md. Taiyab Vs. Meghalaya Board of Wakf and Ors.** reported in **(2008) 2 Gauhati Law Reports 438** and the judgment of Kerala High Court in **C. Muhammed Ali vs. Konnaram Jama-ath palli Committee & ors.** in W.P.(C.) No.36781 of 2008 decided on 18.09.2009.
6. Learned counsel for the State appearing for respondent No.1, 2 and 3 adopts the argument advanced by respondent No.6 and submits that the present writ petition is not maintainable. However, the petitioner has remedy available to file a revision before the High Court.
7. Learned counsel for the respondent No.4 has also taken a similar stand.
8. In reply to the arguments submitted by the petitioner side, the learned counsel for respondent No.6 submits that the application was filed by the petitioner before the Waqf Tribunal under Section 83(2) of Act, 1995 is not disputed. The impugned order is clearly an order dismissing the application assigning reasons for the same.
9. Reliance has been placed on the judgment of Supreme Court in the case of **Surya Dev Rai Vs. Ram Chander Rai & Ors.** reported in **(2003) 6 SCC 675**.

10. Heard the learned counsel for both the parties and perused the impugned order.

11. The learned Tribunal has mentioned the dispute that has been raised by the petitioner in the impugned order and held that the Tribunal has no jurisdiction to consider and decide the kind of dispute that has been raised by the petitioner and it is on this basis the application was dismissed.

12. Section 83(2) of the Act, 1995 is reproduced herein:-

“83. Constitution of Tribunals, etc. –

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.”

Section 6 of the Act, 1995 provides what shall be the dispute. Entering into the contents of the application filed under Section 83(2) is not required at this stage for simple reason, that it would be going into the merits of the case, otherwise it is amply clear that the Tribunal has not proceeded to determine the dispute in accordance with the powers vested in it under Sub-Section 5 and 6 and 7 of Section 83 of the Act, 1995. Hence, the impugned order passed cannot be said to be an order passed accepting or rejecting the pleadings made by the petitioner before the Tribunal.

13. The provision under Section 83(5) is relevant for the decision of this objection which is reproduced as follows 83(5):-

“83. Constitution of Tribunals, etc. –

(5) The Tribunal shall be deemed to be a civil court and shall have the

same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.”

Section 83(5) of the Act, 1995 empowers the Tribunal to proceed with the application filed under Section 83(2) of the Act, 1995 in accordance with the provisions of Code of Civil Procedure, 1908, where there is no limitation of powers compared to the powers vested in a Civil Court. The impugned order speaks, that the kind of dispute raised by the petitioner cannot be raised under Section 83(2) of the Act, 1995. What can be a dispute, has been described under Section 6 and Section 7 of the Act.

14. Apart from that the Section 83 (2) also provides that the grievance should be with respect to any order made under this Act or rules made thereunder may make an application as provided in the provision itself. Section 83(2) very clearly limits that the grievance should be only with respect to order made under this Act or rules made thereunder.
15. On perusal of the application filed by the petitioner and the copy of the application under Section 83(2) of the Act, it would be seen that the petitioner has made complaint against respondent No.4 alleging to have committed financial irregularities and regarding the illegal orders passed by him and alleging that he has passed illegal orders contrary to the provisions of the Act. It is also pleaded that the complaint that has been made by the respondent No.4 against the petitioner is illegal and baseless and the relief that was sought by the petitioner was for grant of permanent injunction to restrain the respondents to proceed against the petitioner, which appears to be a prayer for relief of personal nature.
16. While exercising the powers of a Civil Court, the Tribunal can exercise the power under Order 7 Rule 11 of C.P.C. as well. The Tribunal acting as a Civil Court can consider whether the proceeding is maintainable for

one or other reason according to order 7 Rule 11 of C.P.C. and then the Tribunal has the power to pass orders accordingly. Under these circumstances, the order that has been passed by the learned Tribunal has to be deemed as a lawful order in exercise of jurisdiction vested in it.

17. On the basis of the findings hereinabove, it can be said that the learned Tribunal has passed the order in accordance with law.

18. The Section 83(9) of Act, 1995 is as follows:-

“83. Constitution of Tribunals, etc. –

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.”

19. In the case of Md. Taiyab (Supra), the Guwahati High Court it is held in Paragraph 14, 15:-

14. Point No. (I) :

Import of [Section 83\(9\)](#) of the Wakf Act:

For better appreciation of the issue, the provisions of [Section 83 \(9\)](#) are reproduced below:

"83, Constitution of Tribunals, etc.

(1) to (8) *** *** ***

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal :

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved,

call for an examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other orders as it may think fit.”

15. Since a question has been raised whether the revisional powers conferred under Proviso to [Section 83\(9\)](#) upon the High Court are pari-materia or not to Section 115 of the Code of Civil Procedure and [Article 227](#) of the Constitution of India, it is also necessary to reproduce the above provisions of law in this judgment. Additionally, I would also look at the provisions of Section 151 of the Code of Civil Procedure, which are as under:

115. Revision--(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears--

(a) To have exercised a jurisdiction not vested in it by law, or

(b) To have failed to exercise a jurisdiction so vested, or

(c) To have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court."

“151. Saving of inherent powers of Court --Nothing in this Code shall be deemed to limit or otherwise affect the

inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court."

[Article 227.](#) (1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

20. It is further observed by the Court that the proviso under Section 83(9) of the Waqf Act, 1995 has wide scope compared to the scope of Section 115 of C.P.C. which is incomparable to power under Section 151 of Code of Civil Procedure. However, the Court further proceeded to examine the matter as writ petition itself, but in the present case, the objection of maintainability raised by the respondent No.6 is being dealt with, therefore, this Court has to limit itself in passing orders on the objection raised only.

21. The position in law is clear on the basis of the discussions made hereinabove and therefore, it is held that the petitioner has remedy available to him under the provisions of Section 83(9) of act, 1995, therefore, the present petition is not maintainable.

22. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge