



W.P. (MD) No. 14991 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKEAVALU

W.P. (MD) No. 14991 of 2020
and
W.M.P. (MD) Nos. 8702 and 12630 of 2020

Haji.A.Mohamed Mydeen

... Petitioner

Vs.

- 1.The Secretary to Government,
Backward Classes,
Most Backward Classes and Minorities Welfare (S2) Department,
Secretariat,
Chennai – 09.
- 2.The Chairman,
Tamil Nadu Wakf Board,
No.1, Zaffar Sirang Road,
Chennai.
- 3.The Returning Officer / Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Zaffar Sirang Road,
Mannadi, Chennai.
- 4.The Election Officer / The Superintendent of Wakf,
Madurai Zone,
M.S.S.Wakf Board College, Madurai.
- 5.The District Collector of Madurai / Administrator,



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M.S.S.Waqf Board College,
Madurai – 20.

6.The M.S.S.Wakf Board College,
Rep. By its Principal,
K.K.Nagar,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned election notification dated 07-10-2020 in Nil proceedings issued by the 3rd Respondent herein for election of executive committee of 5th respondent college and consequential notification issued by the 4th respondent herein in R.C.N.S.No.24/SW-E.O/MDU/MSSWB/2020 dated 12-10-2020 and quash the same as illegal and further direct the 3rd and 4th respondents herein to finalize the Electrical Roll of 5th Respondent College in accordance with law within a time stipulated by this Court.

For Petitioner : Mr. V.Meenakshisundaram

For Respondents : Mr. D.Gandhiraj (R1 & R5)
Special Government Pleader

Mr. S.A.Ajmalkhan (R2 to R4)
Senior Counsel



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ORDER

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Heard Mr. V.Meenakshisundaram, Learned Counsel appearing for the Petitioner, Mr. D.Gandhiraj, Learned Special Government Pleader for the First and Fifth Respondents and Mr. S.A.Ajmalkhan, Learned Senior Counsel for the Second to Fourth Respondents and perused the materials placed on record apart from the pleadings of the parties.

2. The Sixth Respondent viz., The M.S.S.Waqf Board College, which is an aided educational institution administered by the Tamil Nadu Waqf Board, is a 'Waqf property', which is governed by the terms of G.O.Ms.No. 1127, Commercial Taxes and Religious Endowments Department dated 09.09.1978 issued by the Government of Tamil Nadu.

3. The grievance ventilated by the Petitioner in this Writ Petition is that the notification dated 07.10.2020 has been issued for conduct of election to the Executive Committee of the Fifth Respondent without properly finalising the electoral roll in accordance with the relevant rules. This Court at the time



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of admission of the Writ Petition on 22.10.2022 had passed an interim order, which continues to be in force.

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4. At this juncture, it must be noticed that Section 83 of the Waqf Act, 1995 (hereinafter referred to as 'the Act' for short), entitles any person aggrieved by an order made under that Act to make an application for the determination of any dispute, question or other matter relating to a Waqf or its property before the Waqf Tribunal. Instead of resorting to that alternative remedy provided under the statute, the Petitioner has filed this Writ Petition without any acceptable explanation for the same.

5. It must, at once, be emphasized that the Hon'ble Supreme Court of India in *Assistant Collector of Central Excise -vs- Dunlop India Limited* [(1985) 1 SCC 260] has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction, in the following words:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are



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entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

The law has been restated by the Hon'ble Supreme Court of India in ***Radha Krishan Industries -vs- State of Himachal Pradesh*** [(2021) 6 SCC 771] as extracted below:-



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“27.1. *The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*

27.2. *The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*

27.3. *Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*

27.4. *An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*



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27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*

27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*

The Petitioner has not been able to demonstrate from the facts of this case as to how he has been impeded from canvassing what is sought to be agitated in this Writ Petition in an application under Section 83 of the Act, and the affidavit filed in support of the Writ Petition is also bereft of any details in that regard.

6. Viewed from that perspective, this Court is not inclined to delve into



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the merits of the controversy involved in this case which touches upon disputed questions of fact for effectual and complete adjudication of the matter.

7. In the result, the Writ Petition, which cannot be entertained, is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

21.02.2023

NCC : Yes/No
Index : Yes/No
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Note: Issue order copy by 16.06.2023.



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- 2.The District Collector of Madurai / Administrator,
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P.D.AUDIKESAVALU,J.

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