
(2014) 02 AP CK 0022
In the Andhra Pradesh High Court
Case No : W.P. No. 38308 of 2013

Ibrahim Bin Abdullah Masquati	Vs	APPELLANT
A.P. State Wakf Board and Others		RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 24
Constitution of India, 1950 — Article 226
Waqf Act, 1995 — Section 32(o), 42

Citation : (2014) 2 ALD 751 : (2014) 2 ALT 209

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : C.V. Mohan Reddy for Ramakrishna Pativada, Advocate for the Appellant; Vedula Venkata Ramana for M.A.K. Mukheed for the Respondent No. 1, Thoom Srinivas for the Respondent No. 2, C. Raghu for the Respondent No. 3, S. Nyaya Murthy for the Respondent Nos. 6 and 8 and D. Jagan Mohan Reddy for the Respondent No. 7, Advocate for the Respondent

Judgement

Vilas V. Afzulpurkar, J.—Heard learned Senior Counsel appearing for the petitioner, learned Senior Counsel appearing for the A.P. State Wakf Board, learned Senior Counsel appearing for the contesting respondents 2 and 4 to 8 and Mr. C. Raghu, learned Counsel appearing for third respondent. By this writ petition the petitioner challenges the proceedings of Chief Executive Officer, A.P. State Wakf Board in File No. 42/Hyd/C/2013-Z1, dated 27.11.2013, which has taken note of the resolution dated 4.11.2013 passed by Majlis-e-Umma of Mumtaz Yaruddowla, a wakf institution, and ratified the appointment of managing committee of the said wakf institution. This writ petition seeks to declare the said proceedings as null and void, without jurisdiction and non est.

2. It is stated in the affidavit filed in support of the writ petition that the wakf institution is of 75 year-old, registered with A.P. State Wakf Board and it has been running a degree college with intake of 1000 students and 60 staff members and also an Engineering College with 780 students and 45 staff

members, apart from running an Asafia High School. It is further stated that there are 17 members constituting Board of Trustees of the wakf institution and the committee constituted was intimated to the A.P. State Wakf Board under its letters dated 15.11.2013 and 29.11.2013. It is further alleged that another committee comprising respondents 2 to 8 herein filed a representation dated 25.11.2013 before the Chief Executive Officer of the A.P. State Wakf Board which stands ratified by the impugned proceedings and thereby the said new committee is said to have attempted to take over the wakf institution. Various contentions are raised with respect to ill-eligibility of respondents 3 to 6 and the 7th respondent is said to have resigned as per his letter. The petitioner also challenges the impugned proceedings on the ground that the same was issued without notice to the wakf institution, without notice to the incumbent secretary and without conducting any enquiry and despite the Wakf Board being aware of the fact that the incumbent secretary Mr. Mehboob Alam Khan has been in office and no such alleged meeting of new committee has taken place. It is also alleged that earlier there was a dispute which was resolved by the A.P. State Wakf Tribunal in O.A. No. 12 of 2010 and even the directions of the Tribunal were violated while passing the impugned proceedings.

3. On 27.12.2013 the learned Senior Counsel, who has taken notice on behalf of the contesting respondents, sought time to file counter. A.P. State Wakf Board has filed a detailed counter. 7th respondent filed a separate counter. The petitioner has filed a reply affidavit together with documents with respect to both the said counters. The writ petition was heard in extenso by hearing the learned Senior Counsel appearing for the parties.

4. The counter-affidavit filed on behalf of A.P. State Wakf Board through its Chief Executive Officer states that the properties of wakf institution are matter of record and are not disputed and so far as the managing committee which has been recognized under the impugned proceedings is concerned, it is stated that the representation dated 15.11.2013, said to have been filed by the petitioner's committee was received by the Chief Executive Officer only on 2.12.2013 after the issuance of the impugned proceedings dated 27.11.2013. Similarly second representation dated 29.11.2013 of the petitioner was received on 30.11.2013. It is stated that since the impugned proceedings were already issued on 27.11.2013, there was no occasion for the Wakf Board to consider the petitioner's representations dated 15.11.2013 or 29.11.2013. The Chief Executive Officer also further states that since the impugned proceedings are based upon the resolution dated 4.11.2013 of the wakf institution which was communicated to the A.P. State Wakf Board by the new committee through its representation dated 25.11.2013, the same was merely approved. It is further stated that the wakf institution is under the management of the committee recognized by the Wakf Board and that the contest between the two committees is required to be resolved by approaching the A.P. State Wakf Tribunal where O.A. No. 64 of 2013 is already pending. So far as the ratification referred to in the impugned proceedings is concerned, it is stated that the said proceedings

were merely issued on the basis of the representation and material received from the new committee and that the impugned proceedings were passed within the powers of the A.P. State Wakf Board u/s 42 of the Wakf Act, 1995 (for short "the Act").

5. Mr. C.V. Mohan Reddy, learned Senior Counsel appearing for the petitioner submits that the power of Wakf Board with regard to committee of a wakf institution is traceable only to Section 42 of the Act which requires that any change in the management of the registered wakf institution is required to be notified to the Wakf Board. The learned Senior Counsel, therefore, submits that the Wakf Board has no power to ratify or recognize any particular group claiming to be in management of a registered wakf institution merely on the basis of their claim and that the impugned proceedings ratifying the action of the wakf institution in constituting a new committee, as alleged, is, therefore, beyond the powers of the Wakf Board u/s 42 of the Act. The learned Senior Counsel also raised further contention on facts that an intimation dated 15.11.2013 was sent to the Wakf Board by the incumbent committee which was acknowledged to have been received by the Wakf Board on 23.11.2013, a copy of which is filed as Ex.P2 along with the writ petition and the said intimation was completely ignored while recognizing the new committee regarding which the intimation was purportedly received by the Wakf Board only on 25.11.2013 i.e., subsequent to the petitioner's intimation. The learned Senior Counsel also points out that the attempt on the part of the purported new committee is only to take over the wakf institution by displacing the incumbent Committee. The learned Senior Counsel also states that so far as the educational institutions run by the wakf institution is concerned, the secretary of the incumbent committee Mr. Mehboob Alam Khan is already recognized as correspondent u/s 24 of the Andhra Pradesh Education Act and as such any action of the Wakf Board in recognizing and ratifying the new committee would seriously hamper the functioning of the wakf institution including its educational institutions under its control.

6. Mr. Vedula Venkataramana, learned Senior Counsel appearing for the A.P. Wakf Board, however, submits that the proceedings of the Wakf Board impugned in this writ petition ought not to have been read as a statute and the said proceedings merely identifies the committee of a wakf institution which is said to have been elected as per the resolution of the wakf institution dated 4.11.2013. According to him, the said committee is merely identified by the Wakf Board as the managing committee responsible for the management of the wakf institution, particularly with regard to managing and supervising the affairs of the wakf institution authorizing them to incur necessary expenditure, maintenance and for regularly submitting returns, statistics etc., to the Wakf Board. Thus, according to the learned Senior Counsel, the word "ratify or "recognise" is not to be understood in the contest in which the statute used the said word. The teamed Senior Counsel also points out that so far as the resolution of the wakf institution dated 4.11.2013 is concerned, the same is already questioned before the A.P. Wakf Tribunal in O.A. No. 64 of 2013 filed by one Mehboob Alam Khan and as

such the disputes between the two groups with regard to the management of the said institution can only be resolved and adjudicated by the A.P. State Wakf Tribunal. He also submits that since the wakf institution is under the management of the said committee which is effectively managing the institution, no interference is called for by this Court.

7. Mr. C. Raghu, learned Counsel for 7th respondent, while supplementing the aforesaid submissions, denied that the 7th respondent has ever resigned as a member as alleged by the petitioner. He also asserts that he is a practicing lawyer and he never resigned and that the third respondent has been continuing as a member of the trust and he was duly elected as honorary secretary as per the resolution dated 4.11.2013.

8. The powers of the Wakf Board under the Act, it is accepted by the learned Senior Counsel, is only supervisory and the Wakf Board is not empowered to interfere with the day to day administration of the wakf institution. Further the said wakf institution has its own rules, regulations and bye-laws which are described as a Constitution of the Mumtaz-Yar-Ud-Dowlah Waqf, a copy of which is filed by the petitioner as Ex.P10 along with the writ petition. The functioning of the said wakf institution is, therefore, regulated by the said constitution and it envisages that the management of the said wakf institution vests in the Wakf Board comprising of not more than 17 members and not less than 11 members and the members among themselves would elect a President, Vice-President, Secretary and Treasurer and shall hold office for a period of two years. The affidavit of the petitioner filed in support of the writ petition does not, however, give details as to when the earlier committee was elected or was holding the office or the period for which the said committee was holding the office. Thus even if the earlier committee was holding the office as alleged, on the date when the impugned proceedings were issued, it is apparent from the record of the case as well as the counter-affidavit filed by the A.P. State Wakf Board that the said wakf institution intimated the Wakf Board about the resolution dated 4.11.2013 whereby the managing committee was allegedly elected. The said intimation on behalf of the newly elected managing committee was informed to the Wakf Board on 25.11.2013, based on which the impugned proceedings dated 27.11.2013 were issued. Keeping in view the powers of the Wakf Board envisaged under the Act with respect to institutions under its supervision, Section 42 of the Act merely requires the wakf institution to notify the Wakf Board of any change in its management. The learned Senior Counsel for the first respondent-Wakf Board, however, places reliance upon Section 32(o) of the Act which provides that the Wakf Board may generally do all such acts, as may be necessary for the control, maintenance and administration of wakfs. Thus a reading of the said provision along with Section 42 of the Act clearly shows that the Wakf Board merely exercised its supervisory power while passing the impugned proceedings and the same would not amount to interference in the day-to-day administration of the wakf institution, which is left entirely for the institution. It is also evident that though the impugned proceedings used the word "ratify" etc., the same has only

to be understood and applied in the sense of identifying the committee in the management of the wakf institution and not beyond that so as to make the committee answerable to the Wakf Board for the proper management of the institution.

9. Since there is controversy with regard to two different sets of intimations, said to have been filed with the Wakf Board, one by the petitioner under their intimation dated 15.11.2013 and the other filed by the new managing committee dated 25.11.2013 are concerned, I have seen the original record from the A.P. State Wakf Board. The said file shows that the new managing committee through its secretary by a letter informed the Chief Executive Officer of the Wakf Board on 25.11.2013 of the resolution of the wakf institution dated 4.11.2013 while enclosing a copy of resolution, proceedings of meeting, list of members and a copy of gazette dated 15.2.2010. So far as the petitioner is concerned, the intimation dated 15.11.2013 addressed to Chief Executive Officer refers to Rule (sic - Section) 42 of the Wakf Act and gives the names of members and their designations. In the said intimation letter there is, however, no reference to any resolution of the institution as is found in the other intimation. Further the rubber stamp of A.P. State Wakf Board which is evident on the said intimation is dated 2.12.2013 which is obviously after the impugned proceedings were passed. The subsequent intimation of the petitioner dated 29.11.2013 is also similar to the earlier intimation, but with a rubber stamp on 30.11.2013 of A.P. State Wakf Board. It is, therefore, prima facie evident that the intimation of the incumbent managing committee of the petitioner was received by the Wakf Board subsequent to the impugned order and that the Wakf Board had no opportunity to look into the same for the purpose of any action as the impugned proceedings were already issued on 27.11.2013. It is also apparent that there are two conflicting claims of the two different managing groups and the said dispute is said to be subject-matter of O.A. No. 64 of 2013 pending before the A.P. State Wakf Tribunal. In view of the said dispute, therefore, it cannot be resolved by this Court under its extraordinary jurisdiction under Article 226 of the Constitution of India. Therefore, in my view, the petitioner and the contesting respondents are required to be relegated to the jurisdiction of A.P. State Wakf Tribunal for resolution of their dispute. It is stated across the bar that O.A. No. 64 of 2013 which is pending before the A.P. State Wakf Tribunal questions the validity of the alleged election and resolution of the new committee dated 4.11.2013. Whether the new committee was properly elected in accordance with the constitution of the wakf institution or not, is a matter to be decided by the A.P. State Wakf Tribunal.

10. In view of that, therefore, it is necessary to clarify that the impugned proceedings merely amount to identifying the managing committee of the wakf institution as per its resolution dated 4.11.2013 and the same does not amount to any stamp of approval or recognition of the said committee by the Wakf Board by virtue of the impugned proceedings. The A.P. State Wakf Tribunal shall be free to adjudicate upon the merits of O.A. No. 64 of 2013 and pass appropriate orders

in accordance with law.

11. So far as various educational institutions under the management of the wakf institution are concerned, it is stated that the committee as identified under the impugned proceedings is in office and has been managing the institution and there are no allegations of any irregularity against the said management. In order to safeguard the educational institutions and interest of the wakf institution, it is just and appropriate to direct the first respondent-A.P. State Wakf Board to require the said managing committee identified by it as per the impugned proceedings to file periodical returns of income and expenditure every half yearly and a report about its activities so that the Wakf Board would be in a position to monitor the management by the said committee pending resolution of the dispute by the A.P. State Wakf Tribunal. With the above observations, this writ petition is disposed of directing the A.P. State Wakf Tribunal to adjudicate and dispose of, as expeditiously as possible, O.A. No. 64 of 2013 pending before it, in accordance with law, after giving due notice and opportunity to all the parties. Miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.