
(2014) 01 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 582 of 2014

Mirza Khusru Ali Baig

APPELLANT

Vs

The Andhra Pradesh State Wakf Board and two Others

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Waqf Act, 1995 — Section 42 6 7 83 83(4)

Citation : (2014) 4 ALD 427 : (2014) 6 ALT 394

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : V. Venkataramana, for M/s. Bharadwaj Associates, for the Appellant;
M.A.K. Mukheed for Respondent No. 1 and Sri M.S. Prasad, for Sri B. Nalin
Kumar for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This is a Writ of Prohibition for restraining the Labour Court-II, Hyderabad, Full Additional Charge of Single Member of the Wakf Tribunal, Hyderabad, from adjudicating O.A. No. 64 of 2013 filed by respondent Nos. 2 and 3 herein. The brief facts leading to the filing of this Writ Petition are as follows:-

There was a Wakf called Mumtaz Yaruddowla Wakf (for short "the Wakf"). A resolution was stated to have been passed by the members/trustees of the Wakf on 04.11.2013 electing office bearers. On 25.11.2013, a letter was sent by the members/trustees of the Wakf enclosing the said resolution to respondent No. 1- Board u/s 42 of the Wakf Act, 1995 (for short "the parent Act"). On 27.11.2013, respondent No. 1 has purportedly ratified the said resolution. Respondent Nos. 2 and 3 herein have filed O.A. No. 64 of 2013 before the Andhra Pradesh Wakf Tribunal, Hyderabad, on 08.12.2013. In the said O.A., the following reliefs were claimed:

(a) declaring the impugned proceedings bearing No. F. No. 42/Hyd/C/2013-Z1,

dated 27.11.2013, issued by the first respondent as null and void;

(b) to declare the purported resolution, dated 04.11.2013, said to have been passed by respondent Nos. 2 to 8 purporting to nominate the third respondent as Secretary of the Managing Committee of the first applicant as null and void;

(c) consequently, to grant permanent injunction restraining respondent Nos. 3 to 6 from interfering with the Management of the first applicant;

(d) costs; and

(e) pass such other or further orders as this Hon"ble Tribunal deems fit and proper in the circumstances of the case.

2. Respondent No. 3 after filing his counter-affidavit in the interlocutory application filed in the said O.A., filed the present Writ Petition.

3. It is the pleaded case of the petitioner that as per the pre-amended provisions of Section 83(4) of the parent Act, the Wakf Tribunal was consisting of one person and that under the Wakf (Amendment) Act, 2013 (for short "the Amendment Act"), which came into force from 01.10.2013, the provisions of Section 83(4) of the parent Act have been amended, as per which, the Wakf Tribunal shall consist of three members. It is the further case of the petitioner that a regular Presiding Officer of the Wakf Tribunal has been transferred and the Presiding Officer of the Labour Court-II is kept in-charge of the Wakf Tribunal; that the State Government has not reconstituted the Wakf Tribunal in accordance with the provisions of the Amendment Act; that as the Wakf Tribunal ceased to exist, the very O.A. itself was not maintainable.

4. Neither a counter-affidavit is filed on behalf of respondent No. 1 nor its Standing Counsel has advanced any argument.

5. On behalf of respondent Nos. 2 and 3, a counter-affidavit has been filed, wherein it is, inter alia, stated that along with the said O.A., respondent Nos. 2 and 3 have filed I.A. No. 1637 of 2013 for suspending the proceedings impugned in the O.A.; that the Wakf Tribunal has ordered notice to all the parties including the petitioner; that the respondents in the O.A. have filed counter affidavits opposing I.A. No. 1637/2013; that in the counter affidavit no objection was taken on the maintainability of the O.A.; that I.A. No. 1637/2013 stood posted for hearing on 2-1-2014 and that the respondents in the O.A. have filed I.A. No. 1/2014 for rejection of the O.A. under Order VII Rule 11 CPC. It is further averred in the counter affidavit that the Amendment Act has come into force on 1-10-2013 under which constitution of a three-member Wakf Tribunal is envisaged; that so far no rules have been framed; and that the Wakf Tribunal which was already constituted under the parent Act will continue to have jurisdiction to try the cases which were already filed and that may be filed before it till its reconstitution.

6. Sri Vedula Venkataramana, learned Senior Counsel for the petitioner

submitted that with the amendment of the provisions of Section 83(4) of the parent Act, whereunder a three-member Tribunal is constituted and in the absence of transitional provisions vesting jurisdiction in the existing Tribunal to deal with the pending or fresh cases, till such time as the new Tribunal is constituted by the State Government, the present Tribunal is denuded of the jurisdiction to entertain cases and adjudicate the same. The learned Senior Counsel placed reliance on the Judgment in Thirumala Tirupati Devasthanams and Another Vs. Thallappaka Ananthacharyulu and Others, and submitted that as the existing Tribunal headed by a single person suffers from inherent lack of jurisdiction, the petitioner is entitled for issue of writ of prohibition restraining the Tribunal from proceeding with the hearing of the O.A. and the I.As. filed therein. The learned Counsel has also placed reliance on the Judgment in Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others,

7. Opposing the above submissions of the learned Senior Counsel, Sri M.S. Prasad, learned Senior Counsel appearing for respondent Nos. 2 and 3, submitted that till re-constitution of the Wakf Tribunal, the existing Tribunal shall be conceded with the power to entertain and adjudicate the cases as the aggrieved parties will be left with no alternative remedy in view of the bar of the Civil Court's jurisdiction u/s 85 of the parent Act. He has submitted that while amending the provisions of Section 83(4) of the parent Act, the Parliament has not amended Section 85, which deals with the bar of the Civil Court's jurisdiction in respect of the disputes pertaining to wakfs and that even in the absence of a transitional provision, the provisions of the Amendment Act need to be interpreted by adopting the doctrine of purposive interpretation. He has submitted that as one of the objects of the Amendment Act is to create an exclusive Tribunal for adjudication of disputes pertaining to wakf properties, to insist that the existing Tribunal shall not be permitted to deal with the disputes will be to render such object nugatory. In support of his submissions, the learned Senior Counsel placed reliance on the Judgment of the Division Bench in P. Rama Rao and others Vs. High Court of Andhra Pradesh and others, and of the Full Bench in Badarla Suryakumari Murthy Vs. Badarla Vamana Murthy and Others,). He has also relied on the Judgment of the Supreme Court in MSR Leathers Vs. S. Palaniappan and Another,

8. I have carefully considered the respective submissions of the learned Counsel for the parties.

9. The long title of the parent Act, 1995 discloses that the same is enacted to provide for better administration of wakfs and for the matters connected therewith or incidental thereto. Section 7 thereof reads as under:

10. Power of Tribunal to determine disputes regarding wakfs:

(1) If, after commencement of this Act, any question arises whether a particular property specified as wakf property in a list of wakfs is a wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or

the Mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that:

(a) in the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs; and

(b) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this Section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of Section 6, before the commencement of this Act or which is the subject matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

11. Section 83 of the parent Act deals with Constitution of Tribunals. Sub-sections (1) and (4) thereof, which are relevant for the present purpose, read as under:

Sub-section (1): The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

Sub-section (4): Every Tribunal shall consist of one person, who shall be a

member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

12. Section 85 of the parent Act bars the jurisdiction of the civil courts and the said provision reads as under:

No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

13. In Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, after the parent Act came into force and before the constitution of Wakf Tribunal, O.S. No. 4767/1996 was filed by one of the parties to the dispute in the City Civil Court, Hyderabad, for ejectment and recovery of mesne profits. The defendants raised an objection to the maintainability of the suit in view of the bar of jurisdiction u/s 85 of the parent Act. The said objection was rejected by the trial Court based on the circular of the High Court in ROC No. 2960/E1/98 dated 13-7-1999. Under the said circular, it is provided that the suits or other proceedings involving determination of dispute or question relating to wakf and wakf property or other matters falling within the purview of the Wakf Tribunal cannot be entertained by the civil courts when once the Wakf Tribunal is constituted. Questioning the correctness of the said circular and seeking a direction to the civil court to transfer the suit to the A.P. Wakf Tribunal, the defendants filed the Writ Petition. The main plea of the petitioners therein was that in view of the specific bar of jurisdiction u/s 85 of the parent Act, the civil court was denuded of the jurisdiction to entertain the civil suit and that even if the Wakf Tribunal is not constituted, the civil court cannot entertain suits involving disputes arising under the parent Act. Upon considering the relevant provisions of the Act, the Division Bench held, at paras 5 and 6, as under:

It is true as pointed out by the learned Additional Advocate-General and also the learned Counsel for the petitioners, on the plain language of Section 85, the bar against the entertainment of suit seems to arise on and from the date of the commencement of the Act. The moment the Act came into force, the bar operates, prima facie. The fundamental postulate of Section 85 read with the other relevant provisions is that the Wakf Tribunal shall be a substitute for the civil Courts in respect of matters required to be dealt with by the Tribunal under the Act. The Scheme of the Act contemplates and unfolds the intention of the Legislature in clearest terms that the obliteration of the jurisdiction of the civil Court and the creation of the Tribunal to take over the exclusive jurisdiction confided to it is a simultaneous process. No vacuum or hiatus could have been intended by the Legislature. The delay in the constitution of the Tribunal just as it has happened in this State, would not have been foreseen by the Legislature. Surely, it could not have been the intention of the legislature that the existing remedy or recourse to civil Court should be extinguished as a first step and that remedy should be made available only when the Wakf Tribunal is set up. What

should be the remedy of the aggrieved party or Institutions of Wakf during the intervening period? Should they indefinitely wait in order to pursue their remedy till the State Government issues a notification constituting the Tribunal? In the instant case, the Tribunal was constituted 1 1/2 years after the Act came into force which is fairly a long period. If the aggrieved persons or Institutions are left without any remedy to move the Court or a judicial body during this period, absurd and unintended results would follow. Such consequences are manifestly contrary to the legislative intention. Not only that, even the provision i.e., Section 85 would be vulnerable to attack on the ground of infringement of Article 14 inasmuch as a particular class of litigants would be left without remedy to prevent invasion of their rights recognised by law on account of sheer delay in constitution the Tribunal. Obviously, such construction should be avoided. Literal interpretation should yield to purposive interpretation and a construction which preserves the Constitutionality of the provision. The fact that the provision for transfer of cases from the civil Court to the Wakf Tribunal is not provided for in the Act is also a pointer to the legislative intention that the suits filed earlier to the constitution of the Tribunal shall continue to be dealt with by the civil Court. We are therefore of the view that in the interests of imparting rationality to the provision and accomplishing the Legislative object, Section 85 has to be qualified by the words "after the constitution of the Tribunal" immediately after the words "should lie". No doubt by doing so, the literal construction is eschewed and certain words which are really implicit are read into the section. But such reading and interpretation is not an impermissible exercise. As long back as in 1955, the Supreme Court in *Tirath Singh Vs. Bachittar Singh and Others*, laid down that in order to avoid absurd and anomalous consequences, there could be addition or modification of the words.

The addition of qualifying words as mentioned supra would result in reading down the wide sweep of the embargo laid down in Section 85. Reading down a legal provision to save it from unconstitutionality or unjust or absurd consequences or even to make it sub-serve its avowed purpose has now come to be recognised as an effective tool of statutory interpretation. To cite a few recent examples of such reading down, we may refer to the decisions in *Dy. CTO v. Coromandal Pharmaceuticals*, 1977 (10) SCC 649, *M/s. B.R. Enterprises Vs. State of U.P. and Others*, *Madan Singh Shekhawat Vs. Union of India and Others*, *In Sunil Batra Vs. Delhi Administration and Others etc.*, , the rule of reading down and reading wide was acclaimed as an integral part of interpretational engineering.

14. In *P. Rama Rao and others Vs. High Court of Andhra Pradesh and others*, the question arose as to whether the suits instituted after the Act came into force are to be filed before the Wakf Tribunal only, though the Wakf Tribunal was constituted on a later date and whether the views expressed by the Division Bench in *P. Rama Rao* (2003) 6 SCC 659 (supra) and *M. Bikshapathi Vs. Government of Andhra Pradesh and others*, require reconsideration. The Full Bench opined that the Division Bench in *P. Rama Rao* (2003) 6 SCC 659 (supra)

has laid down the correct law and that it requires no re-consideration. It was further held that as the Judgment in *M. Bikshapathi Vs. Government of Andhra Pradesh and others*,) operates in a different area, there is no conflict between the two Division Bench Judgments.

15. Sri Vedula Venkataramana, the learned Senior Counsel, submitted that the Judgment in *P. Rama Rao* (2003) 6 SCC 659 (supra) instead of helping respondent Nos. 2 and 3, helps the case of the petitioner as it was held therein that until constitution of the Wakf Tribunal, the civil court will continue to have jurisdiction despite the provisions of Section 85 of the parent Act and that on the same analogy, till reconstitution of the Wakf Tribunal, the Civil Court will continue to have jurisdiction notwithstanding the bar placed by Section 85 of the Amendment Act.

16. In *MSR Leathers Vs. S. Palaniappan and Another*, the Apex Court, while reiterating the well settled principles of statutory interpretation observed that one of the salutary principles of interpretation of a statute is to adopt an interpretation which promotes the object sought to be achieved by the Legislation than to which that defeats such object.

17. A careful reading of the Judgment in *P. Rama Rao* (3-supra) would reveal that the same is based on the ratio that while interpreting the provisions of the Act, the Courts shall make a purposive construction and adopt an interpretation which would preserve the constitutionality of a provision and avoid absurdity. The Division Bench held that the scheme of the Act contemplates and unfolds the intention of the Legislature in clearest terms that the obliteration of the jurisdiction of the civil Court and the creation of the Tribunal to take over exclusive jurisdiction confided to it is a simultaneous process and that no vacuum or hiatus would have been intended by the Legislature. The Division Bench further observed that the delay in constitution of the Tribunal, as it has happened in the State, would not have been foreseen by the Legislature and that it could not have been the intention of the legislature that the existing remedy or recourse to civil court should be extinguished as a first step and that the said remedy should be made available only till the Wakf Tribunal is set-up.

18. In the instant case, an analogous situation has been repeated with the only difference that the one-man Wakf Tribunal created under the principal Act stands in the place of civil court. In *P. Rama Rao* (2003) 6 SCC 659 (supra), the Division Bench, in unequivocal terms held that till such time as the Wakf Tribunal is constituted, the Civil Court must be allowed to entertain disputes as there can be no void in the matter of availment of remedies by aggrieved parties. After the said decision, a significant change has taken place, namely, that the Wakf Tribunal, as envisaged u/s 83(4) of the parent Act, has come in place and the Civil Court's jurisdiction has been excluded since then. Drawing the analogy of the case in *P. Rama Rao* (2003) 6 SCC 659 (supra), the Tribunal which was constituted under the parent Act shall be permitted to deal with the disputes till the Wakf Tribunal is reconstituted under the provisions of the Amendment Act. It

will be anomalous to revert to the Civil Court's jurisdiction to decide the disputes falling under the parent Act once again at this length of time. The Parliament would not have visualised repetition of the same situation as prevailed for nearly 1 1/2 years after coming into force of the parent Act, during which period no Tribunal was constituted. Unfortunately, the State Government has not, so far, constituted the Wakf Tribunal in accordance with the Amendment Act. As held by the Division Bench in P. Rama Rao (2003) 6 SCC 659 (supra), no vacuum or hiatus would have been intended by the Legislature. The Division Bench has relied upon the Judgment in Deputy Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others, , M/s. B.R. Enterprises Vs. State of U.P. and Others, and Madan Singh Shekhawat Vs. Union of India and Others, wherein it was held that a statutory provision needs to be read down in order to save it from being unconstitutional or unjust or resulting in absurd consequence or even to make it sub-serve its avowed purpose. As noted hereinbefore, to hold that an aggrieved party has to approach the civil court till re-constitution of the Wakf Tribunal, would be to act contrary to the object with which Sections 83(4) and 85 of the Parent Act have been envisaged.

19. For the above mentioned reasons, I have no hesitation to hold that even in the absence of a transitional provision, the existing Tribunal under the parent Act shall continue to have jurisdiction to decide the disputes till re-constitution of the Wakf Tribunal in accordance with the provisions of the Amendment Act.

20. In the analysis as above, the Writ Petition is dismissed. As a sequel to the dismissal of the Writ Petition, interim order dated 9-1-2014 is vacated and WPMP Nos. 645/2014 and 1526/2014 are disposed of as infructuous.