
(2000) 10 AP CK 0010
In the Andhra Pradesh High Court
Case No : Writ Petition No. 13226 of 2000

Ruknuddin Ahmed

APPELLANT

Vs

Chief Executive Officer and Others

RESPONDENT

Date of Decision : 13-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1995 — Section 109(2)(xiv), 27, 64, 70, 71

Citation : (2013) 4 ALT 194

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Vilas V. Afzulpurkar, for the Appellant; A.M. Qureshi for Wakf Board for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—The petitioner in the instant writ petition invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and challenges the proceedings dated 10-12-1999 of the 1st respondent - Chief Executive Officer A.P. State Wakf Board appointing an enquiry officer to conduct detailed enquiry u/s 71 of the Wakf Act 1995 against the petitioner herein. The petitioner herein is Muthawalli of Sir Nizamath Jung Wakf, Madina Mansions. The 3rd respondent herein has made an application to the Wakf Board complaining about the mismanagement by the petitioner herein. As the Wakf Board failed to act in the matter he filed W.P. No. 20785 of 1999 in this Court. This Court by an order dated 11-10-1999 disposed of the writ petition directing the 3rd respondent to make an appropriate application u/s 70 of the Wakf Act, 1995 (for short "the Act") to the Wakf Board and the Wakf Board was also directed to initiate appropriate action within four weeks from the date of receipt of such an application. Thereafter, the 2nd (sic. 3rd) respondent herein appears to have made an application as per the directions of this Court on 2-12-1999.

2. The respondent-Board after receiving the said application placed the matter

before the Chairperson and the Chairperson accordingly directed an enquiry to be held into the matter by appointing the 2nd respondent herein as the Enquiry Officer, That order is impugned in this writ petition on the ground that the Chairperson has no right or authority in law to appoint the 2nd respondent as Enquiry Officer.

3. Section 70 of the Wakf Act, 1995 provides that any person interested may make an application to the Board supported by an affidavit to institute an enquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the Wakf are being mismanaged, it shall take such action thereon as it thinks fit.

4. It is the case of the petitioner that the Board alone is authorized to take action and institute an enquiry relating to the administration of the Wakf and that the Chairperson has no authority in law to appoint an enquiry officer as the said power is conferred upon the Board alone.

5. It is required to notice that Section 27 of the Act enables the Board by a general or special order in writing to delegate to the Chairperson or any other member, the Secretary or any other officer or servant of the Board or any area committee subject to such conditions and limitations as may be specified in the said order such of its powers and duties as it may deem necessary. Thus it is clear that the Board is authorized to delegate its power to either the Chairperson or any member or the Secretary or any other officer or servant as the case may be.

6. In the instant case, it is brought to the notice of the Court that the Board by its resolution delegated its power u/s 70 to the Chairperson. It is clear that the Chairperson is entitled to act as the delegatee of the Board and exercise the power u/s 70 of the Act. Thus the appointment of the 2nd respondent herein as the enquiry officer to hold an enquiry into the affairs of the Wakf in question does not suffer from any infirmity.

7. However, during the pendency of the writ petition the petitioner herein filed WPMP No. 23063 of 2000 seeking the permission of the Court to amend the prayer and raise certain additional grounds. It is stated that the rules required to be framed by the State Government u/s 119 of the Act have not been framed so far. Section 109(2)(xiv) of the Act deals with the manner in which any enquiry should be held u/s 64 or 71 of the Act. It is contended that unless such rules are framed no enquiry can be held in the matter. It is also stated that the rules under the Act are essential for the purpose of working of the various provisions of the Act including Section 71 of the Act.

8. Obviously, the Board is still acting under the rules framed under the repealed Act. Now it is conceded by the learned Counsel for the petitioner that under the provisions of the General Clauses Act the rules continue to be in operation until the new rules are framed under the Act. Therefore, the enquiry that is to be held now under the existing rules cannot be held to be bad in law.

9. However, the learned Counsel for the petitioner is absolutely right in contending that there is no justification whatsoever on the part of the State Government in refusing to frame the rules under Wakf Act, 1995. This Act came into force in the State of Andhra Pradesh on 1-1-1996. It is rather surprising to notice that the State Government could not frame the rules even after a period of four and half years after the Act has come into force. Hopefully the matter shall receive the attention of the Andhra Pradesh State Government so that the rules are framed under the Wakf Act, 1995. No relief could be granted to the petitioner. The writ petition shall accordingly stand dismissed.