

Allahabad High Court

Mohammad Saleem Krodhi vs U.P. Sunni Central Board Of Waqf, ... on 31 May, 2017

Bench: Manoj Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

'AFR'

Court No. - 2

Case :- CIVIL REVISION No. - 142 of 2017

Revisionist :- Mohammad Saleem Krodhi

Opposite Party :- U.P. Sunni Central Board Of Waqf, Lucknow And 2 Others

Counsel for Revisionist :- Gulrez Khan, Javed Husain Khan

Counsel for Opposite Party :- Punit Kumar Gupta

Hon'ble Manoj Misra, J.

Heard Sri W. H. Khan, learned senior counsel, assisted by Sri J.H. Khan, for the revisionist; Sri Punit Kumar Gupta for the respondent no.1; and Sri Manish Tandon for the respondents 2 and 3.

Considering the ground on which this court proposes to pass order, learned counsel for the respondents do not pray for time to file counter-affidavit and have agreed for final disposal of the matter. Accordingly, with the consent of the learned counsel for the parties, this revision is being finally decided at the admission stage itself.

The present revision has been filed under sub-section (9) of section 83 of the Waqf Act, 1995 against the order dated 05.05.2017 passed by two members including the Chairman of U.P. Waqf Tribunal at Lucknow in Waqf Case No.82 of 2016.

At the outset, the learned counsel for the revisionist has submitted that Waqf Tribunal at Lucknow has been notified consisting of three members including the Chairman. As per sub section (4) of section 83 of the Waqf Act, 1995 a Tribunal must comprise of three members including the Chairman. The statute does not provide a quorum for its functioning therefore all three members of

the tribunal must participate in the decision making process as such the order of Tribunal must be signed by all three members. But the order impugned has been passed under the signature of two members only and, therefore, the said order is void and non-est.

In support of the aforesaid submission, reliance has been placed on a seven Judges Bench decision of the Apex Court in the case of *United Commercial Bank v. Workmen*, AIR 1951 SC 230, wherein, according to the majority view, it was held that a Tribunal comprising of certain number of members, in absence of any provision to the contrary, must function with all its members and the order passed by it must be signed by all its members. Same view has been reiterated in *Lloyds Bank Ltd. v. Lloyds Bank Staff Association*, AIR 1956 SC 746. Reliance has also been placed upon a decision of this Court dated 21.02.2017 passed in Civil Revision No. 3 of 2017, wherein, following the decision of the Apex Court in *United Commercial Bank's case (supra)*, it was held that order passed under signature of two members of a Waqf Tribunal is void and non-est. It has thus been submitted that the order passed by the Tribunal deserves to be set aside and the matter be remanded back to the Tribunal for deciding the matter afresh, in accordance with law.

Learned counsel for the respondents do not dispute the aforesaid legal position. However, they have raised a preliminary objection as regards maintainability of the revision at Allahabad on the ground that the order has been passed by the Waqf Tribunal at Lucknow and therefore only the Lucknow Bench of Allahabad High Court would have jurisdiction to hear this revision.

In response to the aforesaid preliminary objection, the learned counsel for the revisionist has submitted that under sub section (9) of section 83 of the Waqf Act, the High Court has power, on its own motion or on the application of the Board or any person aggrieved, to 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. The High Court would include its Principal Bench at Allahabad as well as its Bench at Lucknow. Jurisdiction of the two Benches inter se is to be determined as per the provisions of the Amalgamation Order, 1948. He has placed reliance on decision of the Apex Court in *Nasiruddin v. State Transport Appellate Tribunal*, 1975 (2) SCC 671 as well as on a Full Bench decision of this Court in *Paritosh Kumar v. Union of India and others*, 2013 (9) ADJ 1 (FB) so as to contend that the jurisdiction of the respective Benches is to be determined on the basis as to where cause of action had arisen. It has been contended that where cause of action had arisen partly within the jurisdiction of Lucknow Bench and partly within the jurisdiction of Allahabad Bench, then it would be open to the litigant, who is the dominus litis, to have his forum conveniens. It has been submitted that a Division Bench of this Court in *Sanjay Somani v. State of U.P.*, 2002 JIC 1 913 had taken a view that the location of the Court, whose order is under challenge, would determine as to whether the challenge to the order can be entertained by the Principal Bench at Allahabad or by Lucknow Bench of Allahabad High Court. It has been submitted that the Division Bench decision in *Sanjay Somani's case (supra)* has been specifically overruled by Full Bench of this Court in *Paritosh Kumar's case (supra)*.

Learned counsel for the revisionist has submitted that only two Waqf Tribunals have so far been notified by the State Government for the entire State of U.P. One is at Rampur and the other is at Lucknow. Both Tribunals deal with disputes relating to Waqfs, as contemplated by sub section (1) of Section 83 of the Waqf Act. It has been submitted that the Tribunal at Lucknow also deals with matters relating to several such districts which fall out of the Oudh Areas of the State. It has been submitted that in the present case the dispute before the Waqf Tribunal related to Mutawalliship of a Waqf which lies within the district of Kanpur but since there is no Tribunal at Kanpur therefore the matter had to be raised before Waqf Tribunal at Lucknow even though part of cause of action had arisen in district Kanpur. It has been submitted that as part of cause of action had arisen in district Kanpur which falls within territorial jurisdiction of the Principal Bench at Allahabad, this court would have jurisdiction to hear the revision.

I have carefully perused the decision of the apex court in Nasiruddin's case (supra) as also the Full Bench decision of this Court in Paritosh Kumar's case (supra). In paragraph 37 of the judgment in Nasiruddin's case (supra), the apex court had observed that the expression "cause of action with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad."

In Sanjay Somani's case (supra), a Division Bench of this Court, while considering the issue whether challenge to orders passed by the Special (CBI Court) at Lucknow can be entertained by the Principal Bench at Allahabad or Lucknow Bench of Allahabad High Court, held that it is the location of the court which is determinative of the fact whether the challenge to the order passed by it can be entertained by the Principal Bench at Allahabad or Lucknow Bench.

The correctness of the decision rendered in Sanjay Somani's case (supra) fell for consideration by a Full Bench of this Court in Paritosh Kumar's case (supra). The Full Bench specifically held that the view expressed by Division Bench of this Court in Sanjay Somani's case (supra) was not correct. The Full Bench held that jurisdiction of two Benches of the Allahabad High Court, the first being the Principal Bench at Allahabad and second being the Bench at Lucknow, is to be determined on the basis as to where the cause of action had arisen.

As in the present case, the dispute relates to Mutawalliship of a Waqf which is admittedly located in Kanpur region, which falls within territorial jurisdiction of the Principal Bench of this Court, the cause of action had partly arisen within the territorial jurisdiction of the Principal Bench of this Court. Accordingly, this Court is of the view that the revisionist had option either to file a revision before the Principal Bench at Allahabad or before the Lucknow Bench at Lucknow.

In view of the above, the objection raised as regards jurisdiction of this Court is overruled.

As there is no dispute that the order impugned has been passed under the signature of only two members, out of the three members comprising the Waqf Tribunal, the impugned order is void in the light of the law laid down by the apex court in United Commercial Bank's case (supra) and is accordingly set aside.

The revision is allowed. The Waqf Tribunal shall accord fresh consideration to the matter in accordance with law.

Order Date :- 31.5.2017 Sunil Kr Tiwari