

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR

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**:ORDER:**

(1) S.B. CIVIL WRIT PETITION NO.4197/2004-MOHD. YASIN KHAN ASRAFI VS. RAJ. BOARD OF MUSLIM WAKF & ORS.  
AND  
(2) S.B. CIVIL WRIT PETITION NO.335/2005-ABDUL WAHID & ORS. VS. THE STATE OF RAJASTHAN & ORS.

UNDER ARTICLES 226 AND 227 OF THE  
CONSTITUTION OF INDIA

Date of Order : 25<sup>th</sup> Feb., 2005

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**PRESENT**

**HON'BLE MR. JUSTICE PRAKASH TATIA**

Mr.Sunil Mehta ]  
Mr.M.R.Singhvi ], for the petitioner.

Mr.N.M.Lodha, AAG, for the State of Rajasthan

Mr.Ravi Bhansali ]  
Mr. Manish Shishodia ], for the respondents.  
Mr. Vijay Bishnoi ]  
Mr. Hemant Choudhary ]

**BY THE COURT:**

Heard learned counsel for the parties.

By these two writ petitions, namely, S.B.Civil writ petition No.4197/2004 and S.B.Civil writ petition No.335/2005, the order dated 18.12.2004 passed by the Rajasthan Board of Muslim Wakf has been

challenged by the petitioners. In S.B.Civil writ petition No.4197/2004, the petitioner is Mohd. Yasin Khan Asrafi, who claimed himself the Secretary of Wakf Committee Dargah Sarif, Kapasan District Chittorgarh and is also party in S.B.Civil writ petition No.335/2005 as petitioner no.3. Both the writ petitions have been filed with common interest of the petitioners. The S.B.Civil writ petition No.4197/2004 was filed on 23<sup>rd</sup> Sept., 2004 before the order dated 18.12.2004 was passed, but since the impugned order dated 18.12.2004 was passed during the pendency of the writ petition no.4197/2004, therefore, the petitioner submitted second stay petition seeking stay of operation of the order dated 18.12.2004. This court by order dated 21.12.2004 stayed the operation of the order dated 18.12.2004.

It appears that petitioner alongwith other persons having common interest in the subject matter during the pendency of the writ petition no.4197/2004, preferred appeal before the Rajasthan Wakf Tribunal, Jaipur. In the appeal before the Rajasthan Wakf Tribunal, Jaipur an objection about the maintainability of the appeal was filed on the ground that the writ petition preferred by the petitioner no.3 Mohd. Yasin Khan (Maulana Mohd. Yasin) is pending before the High Court and the High Court has stayed the operation of the order dated 18.12.2004, therefore, the petitioner's appeal before the Wakf Tribunal is not

maintainable. The Wakf Tribunal vide order dated 13.1.2005 (Anex.14 in the S.B.Civil writ petition No.335/2005) dismissed the appeal of the appellant-petitioner only on the ground that the matter is sub-judiced before the High Court in the writ petition and since the High Court has already stayed the operation of the order dated 18.12.2004, therefore, it should be just and proper to dismiss the appeal preferred by the petitioner-appellant. However, the Wakf Tribunal in its order dated 13.1.2005 itself observed that in case even after decision by the High Court, grievance of the appellant-petitioner survives then they will be free to approach the appellate authority.

Learned counsel for the respondents raised objection that in view of the effective alternate remedy available to the petitioners in the entire matters, the writ petitions are not maintainable and deserve to be dismissed. The objection has been raised without any delay by the respondents.

Since it is not in dispute that the petitioners can challenge the impugned order by filing the appeal before the Wakf Tribunal and there appears to be no reason, not to follow that procedure as provided under the Act itself, therefore, the writ petitions of the petitioners deserve to be dismissed only on this ground.

Since the petitioners have already preferred the appeal to challenge the order dated 18.12.2004 and that appeal was dismissed by the appellate court only because of the reason that writ petition is pending before this court and the court has already passed the interim order staying the impugned order dated 18.12.2004, therefore, there is apprehension of petitioners that the order dated 13.1.2005 may come in their way in case they will prefer the appeal now.

Learned counsel Sh.Manish Shishodia pointed out that petitioners have not challenged the order of the Wakf Tribunal dated 13.1.2005. However, learned counsel Sh.Vijay Bishnoi for the respondent no.6 in S.B.Civil Writ Petition No.335/2005 submits that he, as respondent prayed for quashing the order dated 13.1.2005. Be that as it may, the fact remained is that the Rajasthan Wakf Tribunal dismissed the appeal of the appellants-petitioners only because of the pendency of the writ petition before this court, but at the same time, the appellate court itself observed that in case the grievance of the petitioner-appellant survives even after decision of the High Court, they will be free to approach the Wakf Tribunal, therefore, neither the order dated 13.1.2005 can come in way nor it can be read as to bar the remedy of appeal even when this court holds that the writ petitions of the petitioners are not maintainable because of the availability of the

effective alternate remedy in the Act itself.

In view of the above, both the writ petitions are dismissed and the petitioners shall be free to prefer appeal before the Rajasthan Wakf Tribunal, Jaipur and they may submit the application for condonation of delay and the Wakf Tribunal may consider the matter of condonation of delay sympathetically. The petitioners may submit the proper application for interim relief before the Wakf Tribunal and the Wakf Tribunal may pass appropriate order on the stay petition uninfluenced by the order passed by this court by which the operation of the order dated 18.12.2004 was stayed by this Court. However, the stay order passed by this court staying the operation of the order dated 18.12.2004 shall continue to operate for 15 days from the date of this order. Meanwhile, if the petitioners wish to prefer the appeal and application for interim relief then the same may be preferred before the Wakf Tribunal.

(PRAKASH TATIA), J.

c.p.goyal/-