

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NOs.19443 of 2015

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Between :

Balusu Kesava Rao s/o.Balusu Ramalingeswara Rao,
Aged about 67 years, Occu:Agriculture, r/o.Mandapaka
Village, Tanuku Mandal, West Godavari District.

.... Petitioner

And

The State of Andhra Pradesh, rep.by its Principal
Secretary, Endowment Department, Secretariat
Buildings, Hyderabad and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 06.08.2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : Yes / No
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals :
3. Whether Their Lordship wish to see the fair : Yes / No
copy of the Judgment ? :

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION No.19443 of 2015

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... Petitioner

Vs.

\$ The State of Andhra Pradesh, rep.by its Principal
Secretary, Endowment Department, Secretariat
Buildings, Hyderabad and others.

.... Respondents

!Counsel for the petitioner : Sri G.Krishna Murthy for petitioner

Counsel for the Respondents: 1) Government Pleader for
respondents 1 to 5
2) Smt K.lalitha, standing counsel
for respondents 6 and 7

<Gist :

>Head Note:

? Cases referred:

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.19443 of 2015

Heard learned counsel for the petitioners and learned Government Pleader for Endowments and learned standing counsel for subject temple. With the consent of the learned counsels, this writ petition is disposed of at the admission stage.

2. According to the petitioner, his forefather by name, Balusu Venkaiah constructed Sri Ramalingeswara Swami Temple, Katavaram village, Seethanagaram mandal, East Godavari District in the year 1924-25. The family members of the said B.Venkaiah were the trustees of the said temple. In terms of the declaration given in O.A.No.8 of 1957, the grand father of the petitioner by name, Balusu Kesanna, was declared as hereditary trustee. Petitioner is the son of Balusu Ramalingeswara Rao, who is the 3rd son of hereditary trustee Balusu Kesanna. Another member of the family was declared as member of the founder family. He died on 12.04.2014. After his death, petitioner obtained no objection from the members of founder family and applied on 30.08.2014 to the Deputy Commissioner, Kakinada, requesting him to recognize and declare him as a member of the founder family of the 6th respondent temple. Strangely, the Assistant Commissioner vide his proceedings dated 14.05.2015 directed the petitioner to approach the Endowment Tribunal for declaration that he is a member of the founder family in accordance with Section 87(1)(h) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'Act, 1987'). On 22.06.2015, letter of the Assistant Commissioner dated 03.06.2015 is served on the petitioner along with copy of the proceedings dated 28.5.2015 of the Deputy Commissioner appointing the Executive Officer of Sri Gandhi Poshamma Ammavari Temple, Gonduru village, Devipatnam Mandal, East Godavari District as single trustee of 6th respondent and directed the petitioner to hand over charge of the temple.

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3. Aggrieved by the proceedings of the Assistant Commissioner, dated 14.5.2015 directing the petitioner to approach the A.P. Endowments Tribunal, for

declaration that he is a member of the founder family, petitioner filed W.P. No.17226 of 2015, which case is disposed of separately. Aggrieved by the orders dated 28.5.2015 appointing the Executive Officer of 7th respondent temple as single trustee of the 6th respondent, the petitioner filed this writ petition.

4. Learned counsel by referring to the provision contained in Sections 15, 18, 19 and 29 of the Act contends that the Executive Officer of another temple cannot be appointed as a single trustee of the subject temple. Such action is ex facie illegal. He further contends that since the Executive officer of the 7th respondent is in regular employment, he cannot be appointed as single trustee of another temple and that is illegal. He further contends that 7th respondent cannot be expected to spare sufficient time and energy to attend to the work of the subject temple and, therefore, he is disqualified in terms of the Section 18(d) of the Act.

5. Learned counsel for the petitioner contends that Section 15 of the Act, 1987 deals with appointment of Board of Trustees to various categories of temples. As per the provision contained in sub-section (2) of Section 15, the Deputy Commissioner is competent to appoint Board of Trustees to Section 6 (c) temple. However, it is also permissible to the Deputy Commissioner, in the interest of the institution or endowment or for any other sufficient cause or reason to be recorded in writing appointing a single trustee instead of Board of trustees. Learned counsel contends that extraordinary power is vested in the Deputy Commissioner to appoint a single trustee in accordance with the first proviso appended to sub-section (2) of Section 15, to be exercised in exceptional circumstances, but cannot be resorted to as a matter of course. Learned counsel further contends that the person who is appointed as single trustee is already Executive Officer of another temple. The Executive Officer of one temple cannot be appointed as single trustee of another temple. Section 18 of the Act provides qualifications to be eligible as trustee and Section 19 provides disqualifications. Section 19(1)(g) of the Act prohibits appointment of a person as trustee if he is an office holder or servant attached to, or a person in receipt of any emoluments or perquisites from such institution or endowment.

6. Learned counsel further contends that in terms of provision in Section 18(d), the 6th respondent is not qualified to be appointed as single trustee.

According to Section 18(d), a person appointed as single trustee must have sufficient time and interest to attend to the affairs of the institution. The 7th respondent is Executive Officer of

Sri Gandhi Posamma Ammavari Temple, Gonduru village, Devipatnam mandal, East Godavari district and the Executive Officer has to remain there regularly to attend to various activities of the temple. Petitioner temple is far away from the said temple and, therefore, it is not possible for said Executive Officer to have sufficient time and interest to attend to the affairs of the subject temple.

7. Learned standing counsel submits that as per Section 15 (2) of the Act, 1987, the Deputy Commissioner is competent authority and, therefore, the impugned decision taken by the Deputy Commissioner is valid and legal. She further submits that Section 19(1)(g) of the Act is not attracted inasmuch as the 7th respondent is not receiving any emoluments from the subject temple nor is an office holder or servant attached to the subject temple. Only if those two contingencies are satisfied, the disqualification clause would apply. She further submits that Section 18(d) is not violated. It cannot be said that 7th respondent cannot spare sufficient time and interest to attend to the affairs of the institution. Learned standing counsel further contends that the petitioner has not raised specific plea of earning disqualification by the Executive Officer of another temple in accordance with the provision contained in Section 18(d) and, therefore, it is not permissible for the counsel to argue such contention. Learned standing counsel supports of the decision of the respondent authority in appointing 7th respondent as single trustee of the 6th respondent.

8. The point for consideration is whether appointment of an Executive officer as a single trustee of 6th respondent temple is legal and valid?

9. To appreciate the rival contentions, it is necessary to examine the scope of Sections 15, 18, 19 and 29 of the Act, 1987 and A.P. Charitable and Hindu Religious Institutions and Endowments, appointment of Trustee Rules, 1987 (Rules, 1987).

10. Section 15 of the Act deals with appointment of Board of Trustees. According to sub-section (2), if the income of temple is less than Rs.2.00 lakhs, the Deputy Commissioner can constitute a Board of Trustees consisting of three

persons. However the first proviso appended to sub-section (2) enables the Deputy Commissioner to appoint single trustee instead of Board of trustees. Such discretion vested in terms of the first proviso is subject to satisfying conditions mentioned therein, i.e., should be in the interest of institution or endowment or any other sufficient cause or reason to be recorded in writing. Section 18 of the Act prescribes qualifications for appointment of a trustee. So far as this case is concerned, clause (d) is relevant. According to this clause, the person who is to be appointed as trustee should have sufficient time and interest to attend to the affairs of the institution. Section 19 of the Act, 1987, prescribes 11 disqualifications in sub-section (1). Insofar as this case is concerned, rival contentions are on the scope of sub-section (1)(g) of Section 19 of the Act. According to Sub-section (1)(g) if a person is an office holder or servant attached to, or a person in receipt of emoluments or perquisite from subject institution or endowment, he is not qualified to be appointed as trustee.

11. In exercise of power vested by the Act, 1987, Rules 1987 were notified. The Rules, 1987 lay down detail procedure for appointment of trustees. According to Rule 4, there must be a public notice in Form-I intending to constitute Board of Trustees and calling for willingness of persons for appointment as members of the trust board. Rules prescribe wide publicity of such intention. On receipt of applications in response to such notification, the competent authority should cause verification of the antecedents, scrutinize their applications and pass orders appointing selected persons as trustees. Thus, the scheme of the Act and the Rules made there under envisage detailed procedure for appointment of persons to the Board of Trustees of a temple.

12. On a closer reading of the first proviso appended to Section 15(2) of the Act, 1987, it is clear that discretion vested in the Deputy Commissioner is only to the extent of appointing a single trustee instead of three members to a temple having less than Rs.2.00 lakhs income. This proviso does not vest power in the Deputy Commissioner to appoint a person as a single trustee without following due procedure as envisaged in the Rules, 1987. Thus, whether three members are appointed to the Board of trustees or a single member, the procedure as envisaged in Rules 1987 has to be followed. Even such discretion is constrained by the requirements as prescribed in the first proviso. It is thus clear

that it is an exceptional power which can be exercised in extraordinary circumstances but not as a matter of course.

13. Even assuming that, Deputy Commissioner is competent to appoint a single trustee without following due procedure, on a cumulative reading of Sections 15, 18, 19 and 29 read with Rules, 1987, I am of the considered opinion that the Act does not envisage appointment of Officers of the Endowment Department as trustees. Such appointment is contrary to the statutory mandate. Section 29 of the Act is comprehensive provision dealing with appointment of Executive Officers to various categories of temples. Whenever there is a requirement to ensure proper administration of Section 6(c) temple, power is vested in the competent authority of the Endowment Department to appoint an Executive Officer. That Executive Officer is entitled to take all administrative decisions and manage the affairs of the temple. This makes it clear that Act does not envisage any role to permanent officers of the Department to act as trustee.

14. According to third proviso to Section 15(2) of the Act, 1987, the recognized founder or member of the founder family shall discharge the functions of the board of trustees. In the absence of Executive officer or founder family member, or trust board is not constituted within the period specified, the Commissioner is competent to make arrangements to look after the affairs of the institution during the interregnum period between the date of expiry of the terms of the trust board and constitution of the new trust board. In the instant case, since no trust board is constituted, after the demise of Balusu Sri Kesava Rao petitioner claims to be performing duties as a trustee._

15. Admittedly, the procedure as envisaged in the Act read with Rules 1987 is not followed before appointing the 7th respondent as single trustee. Such appointment is *ex facie* illegal as no such power is vested in the Deputy Commissioner to appoint a single trustee without following due procedure. Furthermore, there is merit in the contention urged by the learned counsel for the petitioner that in accordance with the provision contained in section 18(d), person appointed as a trustee, more so if he is a single trustee, should have sufficient time and interest to attend to the affairs of the institution. Admittedly,

the 7th respondent is an Executive Officer of another temple, which is not located in the same village. Therefore, it cannot be expected that 7th respondent would be able to spare sufficient time and interest to attend to the affairs of the subject temple. The clause in Section 18(d) has to be given due weight. It is in the interest of proper administration of the temple. The very purpose to appoint a single trustee is defeated if a person so appointed is unable to spare his time to the temple. Thus, in terms of the provision contained in section 18(d), the 7th respondent is not qualified to be appointed as single trustee.

16. For all the reasons stated above, the order impugned is not sustainable. Accordingly, the writ petition is allowed. There shall be no order as to costs. Miscellaneous petitions if any pending shall stand closed.

Date : 06.08.2015
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JUSTICE P.NAVEEN RAO

HON'BLE SRI JUSTICE P.NAVEEN RAO

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