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**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

WP No.3402 of 2009

ORDER ::

This writ petition is filed seeking to issue an order one in the nature of writ of mandamus declaring the action of the 1st respondent–Commissioner of Endowments, Hyderabad, in passing the impugned orders vide proceedings No.J2/10060/2008, dated 12-05-2008 as being illegal, arbitrary and violative of principles of natural justice and against the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987, (for short, 'the Act') and consequently set aside the said proceedings.

2. Petitioner-Telangana Temples Religious Employees Union represented by its President is a registered society under the Societies Registration Act, vide Registration No.1285 of 2004. The main aims and objects of the Union is to protect the rights of Poojaries who are working in the Temples in Telangana area. That one Sri Ganapathy Temple situated at Padmanabha Nagar, Mehdipatnam, Hyderabad, is being managed by the 2nd respondent-Ganapathy Seva Samithi and in the said temple, sub-temples *viz.,* Sri Kubhera, Sri Abhayanjaneya Swamy, Sri Shiridi Sainatha and Pochamma Ammavaru are existing. That the said temples are constructed in about 1500 square yards and 4 Archakas, 1 Clerk, 2 Watchmen and 1 Sweeper are working. That several devotees are coming and offering prayers to the Deities in the said

temple. In the temple premises hundies are existing and Seva tickets are being sold. The nature of temple is public temple. That the income of the temple is about Rs.1,50,000/- per month and the main source of income is through sale of pooja rusums, donations and hundies. That the salaries of the staff is about Rs.50,000/- per month. That the members of Sri Ganapati Seva Samithi- $2^{nd}$ respondent are managing the affairs of the temple. In spite of getting more than Rs.1,00,000/- per month, the $2^{nd}$ respondent-Seva Samithi are not paying minimum wages to the staff including Archakas working in the temples and, therefore, the Archakas working in the temples have approached Petitioner-Union and requested to interfere in the matter.

3. It is further stated that on verification of the records by the petitioner-Union, the temple was not published under Section 6 of the Act, and therefore, the petitioner-Union has submitted representation dated 06-02-2008 to the $1^{st}$ respondent-Commissioner of Endowments, Hyderabad, stating all the facts and requested to give security to the Archakas and other staff of the temples and to publish the temple under Section 6 of the Act. That the $1^{st}$ Respondent, on receiving the said representation, got enquired through the Assistant Commissioner, Endowments Department, Hyderabad, who in turn submitted his report to the $1^{st}$ respondent on 05-03-2008 recommending for publication of institution under Section 6 (c) (ii) of the Act. That the $1^{st}$ respondent, on the basis of the report submitted by the Assistant Commissioner, Endowments Department, Hyderabad, issued proceedings No.J2/11383/2008, dated 25-03-2008 for publication of Sri Ganapathi Group temples of Padmanabha Nagar, Mehidipatnam, vide Publication No.873 and a copy of the

same was handed over to the 2nd respondent-Seva Samithi.

4. While the matter stood thus, petitioner- Union came to know that 1st respondent, without issuing notice and without following procedure contemplated under the Act, issued impugned proceedings in File No.J2/10060/2008, dated 12-05-2008 cancelling the publication of Sri Ganapathy Group temples issued in proceedings No.J2/11383/2008, dated 25-03-2008. The 1st respondent has neither review powers nor power to cancel his own orders. The action of the 1st respondent in cancelling the publication issued earlier is without application of mind and without issuing notice to the petitioner and, therefore, the impugned order is illegal, arbitrary and is in violation of principles of natural justice, against the provisions of the Act and same is liable to be set aside.

5. Counter affidavit is filed by the Addl. Commissioner, Endowments Department, Hyderabad, on behalf of the 1st respondent-Commissioner, Endowments Department, Hyderabad denying the averments of the affidavit filed in support of the writ petition stating that the income of the 2nd respondent-temple is less than Rs.1,50,000/- per month. The religious as well as secular staff are paid Rs.10,500/- per month as is evident from the report of Assistant Commissioner, Endowments Department, Hyderabad. The payment of wages to the staff working in the temple depends upon the income of the temple. That Archakas are paid Rs.2,700/- per month and they are provided rent free quarters. They are also allowed to take the plate collection and other presentations given by the devotees. The members of the Managing Committee of the temple never harassed

the Archakas. The Archakas have addressed a letter dated 04-03-2008 to the Commissioner that they are treated very well and they have not complained to the petitioner-Union. On a complaint given by the petitioner-Union, the Assistant Commissioner, Endowments Department, Hyderabad, has submitted a report dated 05-03-2008 for publication of the institution under Section 6 (c) (ii) of the Act. That the Commissioner of Endowments, based on the said report, issued proceedings No.J2/11383/2008, dated 26-03-2008 for publication of 2nd respondent-temple. The publication of the 2nd respondent-temple under Section 6 of the Act has not actually taken effect as it was not published in *Gazettee* and even before such publication was made in the *Gazettee,* the proposal was withdrawn by the 1st respondent-Commissioner, which is within his powers under Section 8 of the Act.

6. The 1st respondent issued proceedings No.J2/10060/2008, dated 14-05-2008 cancelling the publication of the 2nd respondent-temple. The 1st respondent-Commissioner had followed the procedure and that he has powers to review or cancel his orders. That there were no parties to the proceedings to whom notices could have been issued. That the petitioner-Union has no right to demand for the withdrawal of the proposal by the Commissioner as it was never a party to the proceedings. That the decision to withdraw the publication of the subject temple was taken based on the representation made by the Seva Samithi of the 2nd respondent-temple, which is an affected party and also in view of the report of the Assistant Commissioner, who examined the accounts and administration of the temple. As the proposals for publication itself was withdrawn by 1st respondent and

the 1st respondent has powers under Section 8 of the Act to pass any orders which is beneficial to the institution, there is no procedure to be followed. That under Section 8 of Act 30/87, subject to the other provisions of the Act, the administration of all Charitable and Hindu Religious Institutions and Endowments shall be under the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any order which may be deemed necessary to ensure that such Institutions and Endowments are properly administered and the income is duly appropriated for the purpose for which they were found or exist.

7. That the income of the temple is less than 2 lacs per annum. All institutions having less than 2 lacs income per annum are published under Section 6 (c) (ii) of the Act. The legislature amended the provisions of the Act and dispensed with the appointment of Trust Board or Executive Officer or Person–In charge to such institutions and at best, a single Trustee can be appointed, if it is deemed necessary. The Assistant Commissioner reported that the temple authorities have not misused the funds received by the temple and they have maintained the accounts properly. That they have entrusted the management of the temple to Sri Sri Sri Jagadguru Pushpagiri Shankaracharya Mahasamsthanam and the said Math accepted the management. The entrustment of management of the temple to the Math took place even before the proposal to publish the temple under Section 6 of the Act. The Managing Committee of the temple appointed by Sri Pushpagiri Mahasamsthanam has been managing the temple affairs well. The 1st respondent-Commissioner

in his considered view and in exercise of his inherent powers under Section 8 of the Act decided that there is no need for the Government to interfere in the affairs of management of the institution. More so, the 2nd respondent-Seva Samithi of the temple also objected to publication of notification without notice to it.

8. Counter affidavit is filed by the President of the 2nd respondent-Seva Samithi denying the averments of the affidavit filed in support of the writ petition and reiterated the averments of the counter affidavit of the 1st respondent stating that Sri Ganapathy and other temples are constructed by
Sri Ganpathy Seva Samithi and are in management of the Seva Samithi. As per the report of the Assistant Commissioner, dated 05-03-2008, it was mentioned that the salaries being paid to the temple staff is Rs.18,700/- per month. The 2nd respondent -Seva Samithi or its members, who are managing the affairs of the temple, never harassed the Archakas working in the temple. That the management of the temple is paying minimum wages at Rs.2,700/- per month, besides free accommodation. The plate collections and incentives are being taken by the Archakas of the temple only. The petitioner-Union has no right or authority to seek for publication of the 2nd respondent-temple. It is denied that 1st respondent on receiving the representation from the petitioner-Union got enquired through the Assistant Commissioner, Endowments Department, Hyderabad, and who in turn submitted his report to the 1st respondent recommending for publication of the institution under the provisions of Section 6 (c) (ii) of the Act as the said enquiry is without any notice to them or

without the knowledge of the 2nd respondent-Seva Samithi. That the 1st respondent passed orders in proceedings No.J2/11383/2008, dated 25-3-2008 for publication of

Sri Ganapathi Group temples of Padmanabha Nagar, Mehidipatnam, Hyderabad, vide Publication Sl. No.873. But the 2nd respondent-Seva Samithi has no knowledge that the Assistant Commissioner, Endowments Department, Hyderabad, has directed the Inspector, Endowments Department, Hyderabad-2 to hand over copy of the order of publication to the Seva Samithi of the temple vide Letter No.D/325/2008, dated

23-4-2008, for taking further action.

9. Reply affidavit is filed by the petitioner-Union reiterating the contents of writ affidavit. The 1st respondent has admitted that on the representation made by the petitioner-Union, the 1st respondent got enquired through the Assistant Commissioner, Endowments Department, Hyderabad, and on submission of the report by him, the 1st respondent issued proceedings dated 26-03-2008 for publication of 2nd respondent-Seva Samithi under Section 6 (c) (ii) of the Act. Under Section 8 of the Act, the 1st respondent has no powers to review his own orders. That when once order is passed by the 1st respondent, under the provisions of the Act, the affected parties have a remedy to file revision before the Government under Section 93 of the Act. That any Hindu Religious and Charitable Institution, whether registered or not, covered under the provisions of the Act, the said institution is to be published under Section 6 of the Act, irrespective of

the income of the temple. That even if the institution is having income less than 2 lacs, it is mandatory under the provisions of the Act to notify the temple. However, the amended provision under Section 29 of the Act, the Executive Officer can be withdrawn if the institution is administered properly by the managing committee of the concerned temple. The 2nd respondent-temple is being managed by the managing committee appointed by Sri Pushpagiri Mahasamsthanam. The 2nd respondent-Seva Samithi categorically admitted that the temples have to be published under Section 6 of the Act basing on the income of the temple. That the 2nd respondent also admitted that Hundies are existing and Seva tickets are being sold and, therefore, it is in the nature of public temple. That the 2nd respondent-Seva Simithi has no authority to convey its acceptance for adoption of the subject temple by Sri Sri Sri Jagadguru Pushpagiri Shankaracharya Mahasamsthanam and the said Math accepting the management. The 1st respondent-Commissioner is only competent for giving adoption under the provisions of the Act and the said letter issued by the Math and the resolution of the Committee are only created to get the impugned orders from 1st respondent. That once the temple is in the nature of public temple, having free access to the public and Hundies are existing, 1st respondent has no option but to notify the temple under the provisions of the Act and rightly passed orders dated 28-03-2008 for publication, but he has no right to review his own orders and pass the impugned order cancelling the earlier order of publication.

10. Heard learned counsel on both sides who pleaded as per their respective pleadings.

11. The short point that arises for consideration is whether it is within the power of the 1st respondent-Commissioner of Endowments to withdraw the publication of the institution under Section 6 (c) (ii) of the Act before it could be published in the Gazettee and whether the 1st respondent can pass orders, as are necessary, which is beneficial to the institution.

12. Admittedly, the publication of the 2nd respondent-temple under Section 6 (c) (ii) of the Act was not effected as it was not published in the Gazettee. The Assistant Commissioner vide his report dated 05-03-2008 categorically stated that the temple authorities have not misused the funds received by the temple and they have been maintaining the accounts properly. The Managing Committee of the temple appointed by
Sri Pushpagiri Mahasamsthanam has been managing the affairs of the temple. Therefore, it cannot be said that the 2nd respondent Seva Samithi has misused the funds of the temple. The petitioner-Union has no right to demand for the withdrawal of the proposal by the Commissioner as it was never a party to the proceedings, as such, it cannot be said that prior notice had not been issued to the petitioner prior to the issuance of the impugned proceedings. Therefore, the decision of the Commissioner to withdraw the publication of the subject temple was taken based on the representation made by the Seva Samithi of the 2nd respondent-temple, which is an affected party. The management of the temple was entrusted to Sri Sri Sri Jagadguru Pushpagiri Shankaracharya Mahasamsthanam and the said Math accepted the management and such entrustment of management of the temple to the Math took place even before the proposal to publish the temple under Section 6 of the Act. Under those circumstances, the 1st respondent-Commissioner in his considered view and in exercise of his inherent powers under Section 8 of the Act, was of the opinion that there is no need for the

Government to interfere in the affairs of management of the institution, rightly withdrew the proposal to publish the subject temple under Section 6 (c ) (ii) of the Act.

Section 8 (1) of the Act is extracted hereunder:

**8.Powers and functions of Commissioner and Additional Commissioner:**

> "(1) Subject to the other provisions of this Act, the administration of all Charitable and Hindu Religious institutions and endowments shall be under the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found or exist."

A plain reading of the above provision makes it clear that the Commissioner is empowered to pass appropriate orders for the smooth administration of Charitable and Hindu Religious institutions and endowments for its beneficial. In this case, the petitioner-Union is neither a devotee nor a donor or they have contributed funds for the development of the 2nd respondent-temple. The petitioner-Union lack *locus standi* to question the impugned order passed by the 1st respondent as it is not a party to the impugned proceedings. The proceedings No.J2/11383/2008, dated 25-03-2008 for publication of Sri Ganapathi Group temples of Padmanabha Nagar, Mehidipatnam, was not published in the *gazette* as such it has not come into force and, therefore, the question of exercise of review power for withdrawing the publication of the temple does not arise. This Court cannot sit in appeal and decide whether the subject temple is to be published in the *gazette* or not.

13. The contention of the learned counsel for the petitioner that the Managing Committee of the 2nd respondent Seva Samithi has been harassing Archakas and that they are not being paid wages regularly, cannot be countenanced as there is no proof of documents to that effect. In the counter affidavit of the 1st respondent, it is categorically

stated that the archakas have addressed a letter dated 04.03.2008 to the Commissioner stating that they are treated well and they have not complained to the petitioner Union. In view of the said averment in the counter affidavit of the $1^{st}$ respondent, the allegation of the learned counsel for the petitioner that the $2^{nd}$ respondent Seva Samithi has been harassing the archakas, does not merit consideration.

14. In view of above facts and circumstances, I do not find any merit in the writ petition and is accordingly dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition shall also stand dismissed. There shall be no order as to costs.

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**A. RAJASHEKER REDDY, J**

Dated: $14^{th}$ October, 2015

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Dated: 14.10.2015

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