

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

WRIT PETITION NO.14281 of 2015

Between :

Guduru Ramalingeswara Rao s/o.Mallaiah, Aged 58 years,
Single Trustee cum Archaka of Sri Parvathi Sametha
Ramalingeswara Swamy Temple, r/o.D.No.1-34,
Rajupet Village, Pedapadu Mandal, West Godavari District.

.... Petitioner

And

The State of Andhra Pradesh, rep.by its Principal
Secretary, Endowment Department, Secretariat,
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

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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**

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... Petitioner

Vs.

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

.... Respondents

!Counsel for the petitioner : Sri Narasimha Rao Gudeseva for
petitioner

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

<Gist :

>Head Note:

? Cases referred:

HON'BLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION No.14281 of 2015

ORDER:

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. The averments in the affidavit filed in support of the writ petition would disclose that Sri Parvathi Sametha Ramalingeswara Swamy Temple, Rajupet Village, Pedapadu

Mandal, West Godavari District is an ancient temple. For generations family of the petitioner are doing Archakatam service to the subject temple. Petitioner herein is doing Archakatam service for more than 40 years. The Temple has an agricultural land of an extent of Ac.14.46. Out of the same, Ac.6.00 was given to the petitioner for rendering Archakatam and remaining Ac.8.46 was given on lease after conducting public auction. Petitioner has been performing the duties of archakatam and doing all rituals and conducting festivals in the temple religiously. Subject temple is registered in accordance with Section 6(c) of the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'Act, 1987'). By proceedings dated 06.01.2009 of the Deputy Commissioner, Endowments, Kakinada, petitioner was appointed as single trustee. There has never been a complaint of mismanagement of affairs or misuse of funds of the subject temple. While so, by proceedings dated 13.04.2015 of the Deputy Commissioner, Executive Officer of Sri Abhayanjaneya Swamy Temple, Appanaveedu village, Pedapadu Mandal, West Godavari, is appointed as single trustee. The said proceedings are challenged in this writ petition.

3. 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© 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.

4. 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 6th respondent is Executive Officer of Sri Abhayanjaneya Swamy Temple, which is a big temple 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.

5. He further contends that there is no justification to change the existing arrangements. The appointment of a single trustee by replacing the petitioner is politically motivated. According to the learned counsel, wife of the petitioner was elected as Sarpanch to Rajupeta Grampanchayat and she was holding the said office till 2011. In the year 2014 elections, there is a change of ruling political party and the wife of the petitioner do not belongs to the said political party. To take vengeance, the present proceedings are invited.

6. 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 6th 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 6th respondent cannot spare sufficient time and interest to attend to the affairs of the institution.

7. The point for consideration is whether appointment of an Executive officer as a single trustee is legal and valid?

8. 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).

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 term of the trust board and constitution of the new trust

board. In the instant case, since no trust board is constituted, the Archaka of temple is made as a single trustee by virtue of the orders issued on 06.01.2009. These orders are notified in pursuant to the policy decision of the Government dated 16.12.2008 authorizing the Deputy Commissioner to appoint Archaka of temple as a single trustee. Such appointment can be traced to third proviso. So far no efforts made to constitute Board of Trustees to the subject temple.

14. Admittedly, the procedure as envisaged in the Act read with Rules 1987 is not followed before appointing the 6th 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 6th respondent is an Executive Officer of big temple, which is located far away from the subject temple. Therefore, it cannot be expected that 6th 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 6th respondent is not qualified to be appointed as single trustee.

15. 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.

JUSTICE P.NAVEEN RAO

Date : 06.08.2015
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