THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 5266 OF 2009
AND
WRIT PETITION No. 20607 OF 2010

COMMON ORDER :

Since the *lis* is between the parties common to both the Writ Petitions, for the sake of convenience, they are arrayed as referred to in Writ Petition No. 20607 of 2010.

Proceedings of the 1st respondent dated 14.06.2010 allowing the 4th respondent to continue as the Founder Family Member in respect of the 3rd respondent Sri Raja Rajeswari Ammavari Devasthanam, Durga Mitta, Nellore is challenged on the ground that it is the 2nd respondent *Dharmika Parishat* which alone is competent to take any action in accordance with Section 28 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (henceforth, referred to as 'the Act').

The case of the petitioner is that the 4th respondent and himself are brothers and they are the founder family members of the 3rd respondent temple. In accordance with Section 15 of the Act, by following the rotation system, both of them have been discharging the functions as founder family members of the 3rd respondent temple. *Vide* G.O.Rt.No. 1363, dated 06.09.1996, the petitioner was also nominated as a member of the Trust Board. While so, after 2008, he was not allowed to function as a member of the founder family. Hence, the petitioner filed Writ Petition No. 5266 of 2009 seeking a direction to the Executive Officer to permit him to function as a member of the founder family of the 3rd respondent temple, on rotation basis, along with his brother i.e. the 4th respondent. Meantime, the Commissioner of Endowments *vide* proceedings dated 19.03.2009 framed certain charges against the petitioner. Questioning the same, the petitioner filed Writ Petition No. 23748 of 2009, which was allowed on 04.11.2009. The 4th respondent also filed Writ Petition No. 5457 of 2009 to permit him to function as a member of the founder's family in view of the charges levelled against the petitioner.

Though the petitioner was discharging the functions as a founder family member of the 3rd respondent temple, yielding to the political influences, at the instance of the 4th respondent, he has been kept away from the affairs of the 3rd respondent temple *vide* proceedings dated 14.06.2010 issued by the 1st respondent without there being jurisdiction.

Learned counsel for the petitioner *Sri M. Vidya Sagar* submits that *Dharmika parishat* alone has jurisdiction to deal with the matters relating to appointment of Members and Trust Board in respect of the 3rd respondent temple on account of its classification under Section 15(1) of the Act. To support his contention, the learned counsel draws the attention of the Court to the proceedings dated 30.04.2010 issued by the Commissioner, Endowments Department and Member Secretary, *A.P. Dharmika Parishat,* Hyderabad, wherein, the *Dharmika Paishat* had notified that a Trust Board would be constituted for the 3rd respondent temple in exercise of the powers under Section 15 of the Act after 20 days of the said notice. As a matter of fact, a Trust Board was constituted by proceedings dated 07.10.2010 and the 4th respondent was also nominated as the Chairman of the Trust Board. The learned counsel would place reliance upon the judgment of this Court in Writ Petition No. 23748 of 2009, wherein the earlier proceedings dated 19.03.2009 whereunder charges were framed against the petitioner, was set aside holding that in relation to the 3rd respondent institution, only *Dharmika Parishat* is authorised to constitute a Trust Board on account of its classification in terms of Section 15(1) of the Act.

The learned counsel for the petitioner, while placing emphasis on the Proviso to Section 6 of the Act, would urge that for the purpose of classification of the temple under Section 6 of the Act, its income has to be reckoned for three consecutive years and since, admittedly, for the period 2009-10, the income being less than Rs. 1 crore and though for the subsequent period, the income was exceeding Rs. 1 crore, a conjoint reading of Sections 6 and 15 would leave no manner of doubt that it is only the *Dharmika Parishat* which would be competent to initiate any proceedings under Section 28 of the Act.

On the other hand, *Sri P.L. Narsimha Rao,* learned Assistant Government Pleader for Endowments (Andhra Pradesh) appearing on behalf of Respondents 1 and 2 would submit that the institution was notified under Section 6(a) since its income for the year 2008-09 was Rs. 91,04,989/- and for the financial year 2009-10, Rs. 1,12,72,353/-. He further submits that as the income of the institution is more than Rs.1 crore, the government is competent to frame charges against the petitioner and thus, the issuance of impugned proceedings cannot be found fault with. He places on record the income of the temple for the subsequent years i.e. from 2010-11 to 2015-16 which goes to indicate that the income is ranging between Rs.1.54 and Rs.2.40 crores.

Learned counsel appearing for the 4th respondent adopts the arguments made by the learned Assistant Government Pleader.

Heard Sri Srikanth, learned Standing Counsel for the 3rd respondent temple.

Having considered the respective submissions made by the learned counsel and the factual data made available on record, the question that boils down for consideration is *'whether the 1st respondent has jurisdiction to issue the impugned proceedings dated 14.06.2010 or not'.*

In this context, it may be useful to go through some of the provisions of the Act. While Section 6 of the Act mandates classification of the temples based on its income, Section 15 empowers the authorities as specified therein to exercise powers in relation to appointment of the Trust Board/Managing Committee. The basis of classification under Section 15 is the income of the institution. If the income of the institution exceeds Rs.1 crore, the government is the competent authority and if it ranges between Rs.25 lacs and Rs. 1 crore per annum, it is the *Dharmika Parishat,* which is the competent authority.

Section 15 (1) reads as under:

“ ***15. Appointment of Board of Trustees:-***(1) In respect of a charitable or religious institution or endowment included in the list published under Clause (a) of Section 6-

(a) whose annual income exceeds rupees ten lakhs, the government shall constitute a Board of Trustees consisting of (nine) persons appointed by him:

(b) whose annual income does not exceed rupees ten lakhs, the Commissioner shall constitute a Board of Trustees consisting of five persons appointed by him.

Section 28 of the Act reads as under:

28. Suspension, removal or dismissal of trustee:- 1) The authority competent to appoint a trustee may suspend, remove or dismiss a trustee if he-

(a) fails to discharge the duties and perform the functions of a trustee in accordance with the provisions of this Act or the rules made thereunder;

(b) disobeys any lawful orders issued under the provisions of this Act or the rules made thereunder, by the Government or the Commissioner or the Deputy Commissioner or the Assistant Commissioner;

(c) refuses, fails or delays to handover the property and records in his possession relating to the institution or endowment to his successor or any other person authorised in this behalf;

(d) commits any malfeasance or misfeasance or is guilty of breach of trust or misappropriation in respect of the properties of the institution or endowment;

(e) becomes subject to any of the disqualifications specified in Section 19; or

(f) in the case of a religious institution or endowment, ceases to profess Hindu religion.

(2) Where it is proposed to take action under sub-section (1), the authority competent to appoint the trustee shall frame a charge against the trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced against him and of adducing evidence in his favour; and the order of suspension, removal or dismissal shall state every charge framed against trustee, his explanation and the finding on such charge, together with the reasons therefor.

(3) Pending disposal of any charge framed against a trustee, the authority competent to appoint the trustee may suspend the trustee and appoint a fit person to discharge the duties and perform the functions of the trustee.

The arguments of the learned counsel, at first blush, though appear to be attractive, the same does not commend acceptance. The objective of Section 6 is only to classify the temples, based on their income. In the process of classification, discretion is given to the Commissioner to vary the classification at a particular point of time and for that purpose, a three-year consecutive period is stipulated. If we notice Section 15, reference to Section 6 is only for the purpose of identifying the institution and limiting the exercise of the power to appoint a Board of Trustees only to such of those temples which are classified and included in the list published under Section 6(a). Likewise, Section 15(2) deals with the power exercisable in relation to Section 6(c) institutions. In other words, there is no correlation between Sections 6 and 15 except with respect to the appointment of the Board of Trustees. Section 28 gives power to suspend, remove or dismiss the trustee only to the authority competent to appoint trustees.

In the case on hand, as the income of the institution for the year 2009-10 being Rs. 1 crore, the 1st respondent government would be competent to issue impugned proceedings dated 14.06.2010. In that view of the matter, the argument of the learned counsel for the petitioner that the exercise of the power under Section 28 is *ultra vires* cannot stand and the same is liable to be rejected.

However, it is made clear that in the present cases on hand, only the legality with respect to the power has been considered and the same shall not be construed as expressing any opinion with respect to the contents of the proceedings dated 14.06.2010, particularly in view of the fact that as of date, there is no Trust Board existing.

With this, the Writ Petitions stand dismissed. No costs.

The miscellaneous Applications, if any shall stand disposed of.

CHALLA KODANDA RAM, J

07th December 2016

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