THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.32160 of 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a Writ of Mandamus declaring the Notification in Form-I dated 29.8.2016 issued by the fifth respondent as illegal and arbitrary.

2. Heard learned counsel for the petitioner and the learned Government Pleader for Endowments (Telangana) representing the respondents 1 to 4 and Sri Ch.Satish Kumar, learned standing counsel for 5th respondent.

3. The fifth respondent–Sri Venkateswara Swamy Temple, was registered under Section 43 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966. The Temple is notified under Section 6(c) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, Endowments Act). The first respondent issued Memo No.4759/Endt.II/A1/2016-2, dated 06.8.2016 directing the concerned authorities to issue notification inviting applications from the interested persons in order to constitute Trust Board. However, the fifth respondent issued the Notification vide Notice No.27/SVSD/2016, dated 29.8.2016 in Form-I under Sub-rule (1) of Rule 4 of the Appointment of Trustees Rules inviting applications, in pursuance of the Memo dated 06.8.2016 issued by the first respondent.

4. The predominant contention of learned counsel for the petitioner is that the fifth respondent is not empowered to issue Form–I notification; therefore, the same is liable to be set aside. By referring the above provisions, learned counsel for the petitioner has drawn attention of this court to a Division Bench decision of this court in

S.V.Sudhakara Rao v Government of Andhra Pradesh[1]. Learned Government Pleader strenuously submitted that the fifth respondent is entitled to issue Form – I notification.

5. At the time of arguments, both counsel with one voice submitted that in respect of temples notified under Section 6 – C of the Act, the Deputy Commissioner of Endowments alone is competent to issue Form–I notification. In order to appreciate the rival contentions, it is not out of place to extract hereunder Sub-sections (1) and (2) of Section 15 of the Endowments Act and Rule 4 of the Appointment of Trustees Rules, 1987:

> 15. Appointment of Board of Trustees:- In respect of a Charitable or Religious Institution or Endowment, -
> (1) Included in the list published under clause (a) of Section 6, where the income for the Institution exceeds Rupees one crore per annum, the Government shall constitute a Board of Trustees consisting of nine persons appointed by them; where the income of the institution is between Rs.25 lakhs to Rupees one crore per annum, the Dharmika Parishad shall constitute a Board of Trustees consisting of nine persons.
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> (2) Where the income of the institution is between Rs.2.00 lakhs to Rs.25 lakhs per annum, the Commissioner shall appoint a Board of Trustees consisting of five persons and where the income of the institution is less than Rs.2.00 lakhs per annum, the Deputy Commissioner concerned may constitute a Board of Trustees consisting of three persons in respect of each such temple keeping in view the traditions, sampradayams and wishes of the devotees;
> (emphasis supplied)

Rule 4 of the Appointment of Trustees Rules, 1987:

> 4. (1) The authority competent to appoint Trustees shall, forthwith on a report received under Rule 3, cause publication of the notice in Form-I.
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> (2) The notice referred to in sub-rule (1) shall be affixed;
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> (i) on the notice board of the office or on the front door of the institution or endowment or in any conspicuous place where there is no institution;
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> (ii) on the notice board of the Sarpanch, Mandal Revenue Officer, Municipal Office, as the case may be; and

[1] 2008 (4) ALD 225 (DB)

> (iii) on the notice board of the Office of the Commissioner, Regional Joint Commissioner, Deputy Commissioner, Assistant Commissioner, and Inspector as the case may be:
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> Provided that the competent authority may also order of cause publication of the notice in any daily newspaper in the language of the locality at the cost of the institution or endowment, if it is situated in big cities and is capable of meeting the cost of publication.

In S.V. Sudhakara Rao, on which the learned counsel for the petitioner has placed reliance, the Division Bench, after interpreting Section 15 of the Endowments Act and Rule 4(1) of the Appointment of Trustees Rules, held as follows:

> 8. … … …In view of the aforesaid reasons, we hold that on a reading of Section 15 of the Act and the scheme as contemplated in respect of various Institutions and different categorizations and different competent authorities, the only conclusion which the said Rule 4(1) can be made is that the competent authority alone who has to cause publication in notice in Form-I but not by any other authority. All the institutions are made in three distinct clauses depending on the income and separate authority is constituted for exercise of all powers and control independently. Therefore, there is no scope for transgression by one authority or the other, however, high or low in rank may be. It is now well established that the letter of the statute should be given effect to rather than breaking it and giving scope for any other interpretation unintended. There is a clear distinction in regard to the specific powers which statute confers any authority, the exercise of which is mandatory. Keeping the purpose for which the provision is intended viz., the constitution of trust board necessarily all acts in pursuance thereof should be with the same authority. Further any constitution of the trust board is only after due publications to be made by the competent authority and the same cannot be issued or published by any other authority. The publication totally stands different from the other incidental institution of service of notices as a ministerial act. Therefore, causing of the publication would not include ministerial execution thereof, but necessarily means only the publication thereof. Thus, there is absolutely no justification to take away those expressions and to give a different interpretation allowing such publication to be given effect to or made by any other authority. Therefore, no such competent authority including the Government has any power to issue any direction to any other authorities down below to cause such publications or issue notice in regard of the acts to be done, for which they alone are competent.
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> (emphasis supplied)

6. At the time of the arguments, learned counsel for both the parties, in one voice, submitted that the income of the Temple is below Rs.2,00,000/-; therefore, the third respondent is the competent authority to issue the Notification. They further submitted that the fifth respondent–Executive Officer of the Temple has no power whatsoever to issue the impugned Notification dated 29.8.2016.

7. Having regard to the facts and circumstances of the case, the submissions made by learned counsel for both the parties and also the principle enunciated in the case cited above, this court is of considered view that the Notification in Form–I issued by the fifth respondent through Notice Lr.No.27/SVSD/2016, dated 29.8.2016 is liable to be set aside.

8. Accordingly, the writ petition is allowed, setting aside the Notification in Form–I issued by the fifth respondent through Notice in Lr.No.27/SVSD/2016, dated 29.8.2016 in respect of fifth respondent–Temple. No order as to costs. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

T.SUNIL CHOWDARY, J

September 22, 2016.
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