

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7153 OF 2014

Shri Valmiki Bhanudas Chandane. .. Petitioner

Vs

The State of Maharashtra and Others. .. Respondents

—

Shri Sarang S. Aradhye for the Petitioner.

Shri Manish M. Pabale, AGP for the Respondent No.1.

Shri Neel G. Helekar for the Respondent No.3.

—

CORAM : A.S. OKA & A.K. MENON, JJ

DATED : 2ND MAY 2017

ORAL JUDGMENT: (PER A.S.OKA,J)

1. On the basis of the oral permission granted by this Court, the Petitioner has carried out amendment by incorporating Prayer Clause (b-1) to the Petition.

2. Heard learned counsel appearing for the Petitioner and the learned counsel appearing for the third Respondent as well as the learned AGP for the first Respondent State.

3. Rule. The learned AGP waives service for the first Respondent and the Advocate for the third Respondent waives service.

4. Considering the narrow controversy involved, the Petition is taken up forthwith for final disposal.

5. This Petition concerns Vitthal Rukmini Temples at Pandharpur. The Pandharpur Temples Act, 1973 (for short “the said Act of 1973”) was enacted by the State for better administration and management of the said temples and for amalgamation of the Trusts of the temples.

6. The validity of the said Act of 1973 has been upheld by the Apex Court and there is no dispute that the provisions of the said Act of 1973 are in force.

7. The first grievance in this Petition under Article 226 of the Constitution of India is about the action of the second Respondent of appointing 10 new Pujaris (Priests) from 1st August 2014 to perform daily pooja in the temples. The second prayer is for restraining the second Respondent from taking any major policy decision till a permanent Committee as contemplated by Sub-section (1) of Section 21 of the said Act of 1973 is constituted. The third prayer which is added by way of amendment is prayer clause (b-1) which is for issuing a writ of mandamus directing the first Respondent to forthwith constitute a Committee as provided under Sub-section (1) of Section 21 of the said Act of 1973.

8. One of the main challenges in this Petition is to the appointment of 10 new pujaris on the ground that as required under Sub-section (1) of Section 21 of the said Act of 1973, the Committee has not been constituted and the appointments are purportedly made by the Ad-hoc Committee appointed under Sub-section (2) of Section 21 of the said Act of 1973.

9. On the earlier date, we had called upon the learned AGP to take instructions on the question whether a Committee as contemplated by Sub-section (1) of Section 21 of the said Act of 1973 has been constituted. Today, on instructions, he states that no such Committee has been constituted, and as of today, there is an Ad-hoc Committee of the District Collector and Sub-Divisional Officer appointed in terms of Sub-section (2) of Section 21 of the said Act of 1973. Section 21 of the said Act of 1973 reads thus:

“21.(1) Subject to the provisions of sub-section (2) the State Government may, by notification in the Official Gazette, establish a Committee consisting of the following twelve members, that is to say—

- (a) eleven members, including the Chairman, to be appointed by the State Government from amongst persons ordinarily residing in the State who are devotees of God Vitthal and Goddess Rukmini and who, prior to their appointment, make a declaration accordingly in the form determined by the State Government;

- (b) the President of the Pandharpur Municipal Council—ex-officio, if he is a devotee of God Vitthal and Goddess Rukmini and makes a declaration as aforesaid; and is not disqualified under any of the provisions of this Act; and if he is disqualified or does not make such declaration within the period specified by the State Government, then a member of such Council appointed by the State Government who is not so disqualified and who makes such declaration :

Provided that, the disqualification under the proviso to sub-section (1) of section 23 shall not apply in relation to President.

(2) Until the Committee is duly established under sub-section (1), the State Government may, by notification in the Official Gazette, appoint a temporary Committee for the purposes of this Act consisting of two or more persons appointed by the State Government in this behalf ; and one of them may be appointed as the Chairman thereof. Upon the establishment of the Committee under sub-section (1) the members constituting the temporary Committee shall vacate their office, and the temporary Committee shall cease to exercise any powers or duties under this Act and shall hand over all the property vested in it, and the management of the endowment and registered trusts to the Committee duly established under sub-section (1).

(3) The Committee shall be a body corporate by the name "Shri. Vitthal-Rukmini Temples Committee", and shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of property, and to enter into contracts, and may by the said name sue, or be sued, through its Executive Officer."

10. Under Sub-section (2) of Section 21 of the said Act of 1973, there is a power conferred on the State Government to appoint a temporary Committee consisting of two or more persons which will

work till establishment of a Committee as contemplated under Sub-section (1) of Section 21 of the said Act of 1973.

11. The averments made in the Petition and documents annexed to the Petition show that by the judgment and order dated 15th January 2014 passed by the Apex Court in Civil Appeal No.994 of 2007, the Apex Court has affirmed the constitutional validity of the said Act of 1973. Thus, for a period of three years and four months from the said decision, the State Government has failed to constitute a Committee as provided under Sub-section (1) of Section 21 of the said Act of 1973. The Committee ought to have been appointed within a reasonable time at least from the date of the judgment of the Apex Court as there was no impediment whatsoever in the way of the State Government exercising the power under Sub-section (1) of Section 21 of the said Act of 1973.

12. There is no dispute that the impugned appointments of the pujaris made by the second Respondent are on a temporary and ad-hoc basis.

13. In fact, the attention of the Court is invited to the judgment and order dated 10th March 2017 passed by a Division Bench of this Court to which one of us (A.S.Oka, J) is a party in Writ Petition

No.11206 of 2014 filed by the Solapur Zilla General Kamgar Sangh. The said judgment records that the Draft Service Rules have been framed in the year 2015. By the said judgment and order, the Draft Service Rules of 2015 have been ordered to be forwarded to the learned Charity Commissioner of Maharashtra for his approval in terms of Sub-section (2) of Section 38 of the said Act of 1973. A direction was also issued to the effect that if the Service Rules do not include pay and allowances payable to the Officers, Servants and other persons appointed under the said Act of 1973, the proposal containing details of pay and allowances payable to them shall be also forwarded along with the Service Rules to the learned Charity Commissioner for his approval. Under the said order, the learned Charity Commissioner was requested to decide the proposal within a period of three months from the date on which the same is received. This order shows that even the Service Rules of the Officers, Servants and other persons to be appointed under the said Act of 1973 are not yet final.

14. As the appointment of 10 new pujaris made from 1st August 2014 which is the subject matter of challenge is on temporary and ad-hoc basis, it is not necessary to interfere with the said appointments in writ jurisdiction under Article 226 of the Constitution of India.

15. Unless the State Government constitutes a Committee as contemplated by Sub-section (1) of Section 21 of the said Act of 1973, the very purpose of enacting the said Act will not be fulfilled. The Committee ought to have been appointed long time back. Therefore, the State Government will have to immediately exercise the power under Sub-section (1) of Section 21. We, therefore, propose to direct the State Government to exercise the power under Sub-section (1) of Section 21 of the said Act of 1973 and to constitute a Committee on or before 30th June 2017.

16. Hence, we dispose of the Petition by passing the following order:

ORDER :

- (a) We clarify that the appointment of 10 new pujaris made on 1st August 2014 by the Ad-hoc Committee of the second Respondent is purely on temporary and ad-hoc basis till the regular candidates are appointed by the properly constituted Committee after the Service Rules are approved by the learned Charity Commissioner;

- (b) Only on this ground, we decline to entertain this Petition insofar as the challenge to the appointments is concerned;
- (c) We direct the State Government to exercise the powers under Sub-section (1) of Section 21 of the said Act of 1973 by constituting a Committee as provided therein as expeditiously as possible and in any event on or before 30th June 2017;
- (d) The Rule is partly made absolute on above terms.

(A.K.MENON, J)

(A.S. OKA, J)