

\* HON'BLE SRI JUSTICE SURESH KUMAR KAIT  
&  
HON' BLE DR JUSTICE SHAMEEM AKTHER

+ WRIT PETITION No. 13162 of 2016

%02.06.2017

#K. Balchander

.. Petitioner

Vs.

\$ The Vigilance Officer  
and five others  
Respondents

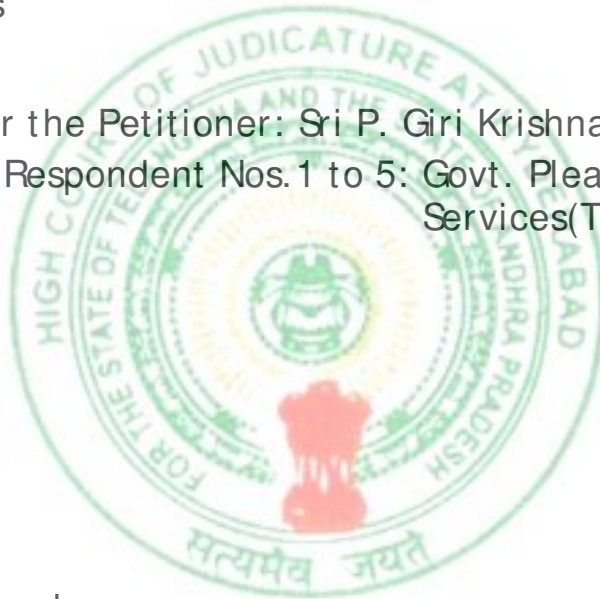
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! Counsel for the Petitioner: Sri P. Giri Krishna  
Counsel for Respondent Nos.1 to 5: Govt. Pleader for  
Services(T)

<Gist :

>Head Note:

? Cases referred:



HON' BLE SRI JUSTICE SURESH KUMAR KAIT  
&  
HON' BLE DR JUSTICE SHAMEEM AKTHER

W.P. No. 13162 of 2016

ORDER:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ petition is filed for the following substantive relief:

“.....to issue an order, direction or particularly one in the nature of writ of Certiorari seeking to set aside the order dated 04.12.2015 in O.A.No. 7102 of 2014 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad and consequently declare the Proc.R.C.No.C1/ 35695/ 2013, dated 04.08.2014 issued by the Office of the Commissioner of Endowments – 3<sup>rd</sup> respondent, as illegal, arbitrary and without jurisdiction.”

2) The case of the petitioner is that on 07.12.2013, the Deputy Commissioner, Endowments Office, Hyderabad Division, framed as many as 14 charges against him, vide Memo in Rc.No.B3/ 4317/ 2013, based on the report of the 2<sup>nd</sup> respondent – Regional Joint Commissioner of Endowments, who reported based on the news publication in Namasthe Telangana and Telecast said to have been aired in CVR News Channel. After receiving explanation from the petitioner who denied all the charges, the Deputy Commissioner of Endowments, Hyderabad appointed the Assistant Commissioner of Endowments, Ranga Reddy District as Enquiry Officer who conducted enquiry and submitted report on

17.04.2014 holding that all the charges leveled against the petitioner are not proved. Hence, the Deputy Commissioner of Endowments, who is the disciplinary authority, while accepting the enquiry report, issued proceedings dated 03.05.2014 dropping all the charges framed against the petitioner with instructions to be more cautious in future.

3) The learned counsel for the petitioner submits that provisional seniority list of Superintendents of Zone-VI were communicated by the Deputy Commissioner of Endowments, vide proceedings dated 30.06.2014 wherein the petitioner's name was shown at S.No.5 and against Column No.8 (disciplinary case pending), it was shown as nil. The next promotion from the post of Superintendent is Assistant Commissioner of Endowments, which is a Gazetted post, for which, the petitioner is fully eligible and qualified and waiting for his turn for consideration of his candidature in the ensuing D.P.C. as there are nearly 23 posts of Assistant Commissioner of Endowments lying vacant in the State of Telangana. However, in order to deprive the petitioner of his promotion chances, the 2<sup>nd</sup> respondent – Regional Joint Commissioner of Endowments, who is in favour of a person placed at last in the seniority list, hatched a plan and sent a report to the Commissioner of Endowments, Hyderabad on 10.06.2014 stating that the Enquiry Officer, who submitted enquiry report

in his case appeared to be not much effective and he did not recommend for any disciplinary action against the petitioner.

4) It is pertinent to mention that the 2<sup>nd</sup> respondent sent another report to the 3<sup>rd</sup> respondent and recommended for further enquiry and action. The 2<sup>nd</sup> respondent, happens to work as In-charge Vigilance Officer in the Office of the 3<sup>rd</sup> respondent and the 1<sup>st</sup> respondent had taken a decision to appoint a new enquiry officer i.e. Assistant Commissioner of Endowments, Secunderabad to re-enquire into the charges dropped by the competent authority against the petitioner and submit a report. To this effect, the said officer issued the impugned proceedings dated 04.08.2014.

5) The learned counsel further submits that the petitioner, being aggrieved by the afore-noted proceedings, filed O.A.No. 7102 of 2014 taking a specific plea that the 2<sup>nd</sup> respondent was not satisfied with the enquiry report and dropping of all the charges by the Deputy Commissioner and recommended to the 3<sup>rd</sup> respondent to re-enquire into the charges. Further, the 2<sup>nd</sup> respondent, who was also In-charge of the 1<sup>st</sup> respondent, issued the impugned proceedings in the name of the Office of the Commissioner of Endowments, without jurisdiction.

6) The learned counsel further submits that the proceedings dated 04.08.2014 were not issued with the

knowledge of the 3<sup>rd</sup> respondent though they were issued from the Office of the Commissioner of Endowments. The 1<sup>st</sup> respondent has directed the Assistant Commissioner, Secunderabad to conduct re-enquiry without the knowledge and approval of the 3<sup>rd</sup> respondent - Commissioner.

7) The learned counsel for the petitioner further submits that the proceedings dated 04.08.2014 were signed by the Deputy Commissioner of Endowments, who is not competent to pass such an order, whereas powers are vested with the Commissioner of Endowments in terms of Section 92 of the Telangana Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for brevity "the Act") which reads as under:

"Power of the Commissioner to call for records and pass order:- (1) The Commissioner may either *suo motu* or on the application, call for and examine the record of any Deputy Commissioner or Assistant Commissioner, or of any other Officer subordinate to him or any Executive Officer or any trustee of a charitable or religious institution or endowment, other than a math or a specific endowment attached to a math in respect of any administrative or quasi-judicial decision taken or order passed under this Act, but not being a proceeding in respect of which a suit or an appeal or application, or reference to a Court is provided by this Act to satisfy himself as to the correctness, legality or propriety of such decision or order taken or passed, and if in any case, it appears to the Commissioner that such decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly.

(2) The Commissioner shall not pass any order prejudicial to any party under sub-section (1), without giving him an opportunity for making representation.

(3) The Commissioner may stay the execution of any decision or order of the nature referred to in sub-section (1) pending the exercise of his powers under the said sub-section in respect thereof.

(4) Every application to the Commissioner for the exercise of his powers under this Section shall be preferred within ninety days from the date on which the order or proceeding to which the application relates was received by the applicant.”

8) The learned counsel also submits that the Tribunal ignored the legal position and passed the impugned order.

9) The learned counsel for the petitioner further submits that in the writ affidavit and also in the counter affidavit filed by the 2<sup>nd</sup> respondent — Regional Joint Commissioner on behalf of the 3<sup>rd</sup> respondent, it is established that the Commissioner of Endowments has not passed the impugned order dated 04.08.2014, however passed by the Deputy Commissioner (S), without jurisdiction.

10) On the other hand, the learned Government Pleader for Services appearing on behalf of respondent Nos.1 to 5 has fairly conceded that the impugned order dated 04.08.2014 is passed by the Deputy Commissioner, however, he submits that the order was passed on behalf of the Commissioner of Endowments.

11) We note that vide order dated 21.04.2016, this Court recorded as under:

“One of the pleas raised by the petitioner before the Tribunal was that respondent No.1 has exercised the powers of respondent No.3 and ordered re-enquiry. Though this plea was referred to in its order, the Tribunal has not specifically adverted to the same. The learned Government Pleader is, therefore, directed to produce the record to verify whether respondent No.1 has passed the order of re-enquiry with the approval of respondent No.3 or he has himself taken a decision without reference to respondent No.3.”

12) This Court went through the record on 16.02.2017 and found that the Commissioner of Endowments was not even appraised of the matter and it was the Deputy Commissioner of Endowments, who signed the file on his behalf. Accordingly, passed the order as under:-

“Perusal of the original record produced by the learned Government Pleader for Services (T.S) demonstrates that the Commissioner of Endowments (T.S) was not even appraised of the matter and it was the Deputy Commissioner of Endowments (T.S) who signed the file on his behalf.

We, therefore, require a counter to be filed by them to explain their stand.”

13) We find no force in the submission of the learned Government Pleader that if an order is passed from the Office of the Commissioner of Endowments Department, State of Telangana, Hyderabad, it is to be considered as an order passed by the Commissioner whether it is passed by the Deputy Commissioner or Assistant Commissioner or any other Officer therein.

14) Section 92 of the Act clearly specifies that the Commissioner of Endowments has power to call for the record and pass any fresh order, but in the present case, the Deputy Commissioner of Endowments dropped the charges framed against the petitioner with a caution to be careful in future and not to repeat such things. However, the Regional Joint Commissioner, Endowments Department, Hyderabad took a decision for conducting re-enquiry into the matter without any jurisdiction.

15) We note from the counter affidavit filed by respondent Nos.1 and 3 before the Tribunal that on the proceedings dated 03.05.2014 issued by the Deputy Commissioner, the Regional Joint Commissioner submitted a report dated 10.06.2014 to the Deputy Commissioner that the enquiry conducted against the petitioner was not dealt with properly as the petitioner, in spite of consuming alcohol in holy temple and being caught red-handed, was left off with a mere warning, and also during the enquiry, the persons who caught the petitioner red-handed were not asked to attend for enquiry. Hence, the Regional Joint Commissioner requested the Deputy Commissioner to conduct re-enquiry into the matter. Accordingly, the Deputy Commissioner issued the impugned order dated 04.08.2014 appointing the Assistant

Commissioner, Endowments Department, Secunderabad as Enquiry Officer to conduct re-enquiry into the matter.

16) From the facts recorded above, it is established that the 3<sup>rd</sup> respondent – Commissioner of Endowments is the competent authority in terms of Section 92 of the Act. Once all the charges were dropped against the petitioner by the competent authority, it is only the Commissioner who had power to pass a fresh order by either accepting or rejecting the enquiry report, which in fact, has not been done in the present case.

17) It is pertinent to mention here that in pursuance of the order dated 16.02.2017, the 2<sup>nd</sup> respondent filed counter affidavit on behalf of the 3<sup>rd</sup> respondent stating that from the impugned order dated 04.08.2014 issued by the Commissionerate Office i.e. the Office of the 3<sup>rd</sup> respondent, it is evident that the 1<sup>st</sup> respondent has not issued the orders in the individual capacity of Vigilance Officer, thus the impugned orders issued are well within the jurisdiction of the competent authority.

18) The 3<sup>rd</sup> respondent – Commissioner is a responsible Officer, and this Court, directed to file counter affidavit for explaining the stand of the 3<sup>rd</sup> respondent in the matter. This Court has thoroughly perused the record whereby it is established that the Regional Joint Commissioner, while

submitting her report dated 10.06.2014, had not taken into consideration written instructions from the 3<sup>rd</sup> respondent, however it is stated by her in the counter that the impugned order is passed by the Commissionerate Office i.e. the Office of the 3<sup>rd</sup> respondent.

19) In any office, there are many officers, as such in the present case, are Joint Commissioner, Deputy Commissioner and Assistant Commissioner apart from other Junior Officers but all are connected to the Office of the Commissionerate. However, Section 92 of the Act confers power on the Commissioner of Endowments to pass such order. Any officer other than the Commissioner is not supposed to pass the order, whereas it is stated in the counter affidavit that the impugned order dated 04.08.2014 is issued by the Commissionerate Office i.e. by the Office of the 3<sup>rd</sup> respondent. It shows that the Commissioner – 3<sup>rd</sup> respondent has filed a false affidavit on the record of the Court. The 3<sup>rd</sup> respondent has not specifically stated in his affidavit that he issued any order delegating his powers to the 2<sup>nd</sup> respondent. When an affidavit is filed before the Court, one has to be very cautious and false affidavit leads to criminal proceedings.

20) From the above analysis, the impugned order is set aside and the writ petition is allowed as prayed for, by

imposing costs of Rs.10,000/- (Rupees Ten Thousand Only) each on respondent Nos.2 and 3. Out of the total costs payable, a sum of Rs.10,000/- (Rupees Ten Thousand Only) is to be paid in favour of the petitioner and the remaining amount of Rs.10,000/- (Rupees Ten Thousand Only) in favour of the High Court Bar Association, State of Telangana, within a period of two weeks from the date of receipt of a copy of this order. No order as to costs.

21) As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

02.06.2017

SURESH KUMAR KAIT, J

Note: L.R. Copy to be marked  
b/ o  
bcj

DR. SHAMEEM AKTHER, J

