

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.578 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 16637 of 2016 dated 13.4.2017, whereby G.O. Rt. No.566 dated 18.5.2016 issued by the State Government, appointing the appellant-5th respondent as a trustee of the 4th respondent-temple, was set aside to the limited extent the appellant-5th respondent's appointment was subjected to challenge.

The learned Single Judge called for the records and, on perusal thereof, has recorded, in the order under appeal, that there was no consideration whatsoever by the 1st respondent therein either regarding the qualification or disqualification of the appellant-5th respondent; in the light of there being no discussion with respect to the merits and demerits, in considering the candidature of the appellant-5th respondent as eligible for appointment as a trustee, the order of appointment suffered from non-application of mind and ignoring consideration of the material on record; the record did not disclose that any of the executives ie, the Executive Officer, Assistant Commissioner, Commissioner had made any efforts to make a relative study of the merits and demerits of the applicants, an exercise which is required to be made in terms of Section 17 read with the Trustee Rules; and in the light of the earlier judgment of this Court in **Pagadala Pratap and another vs. State of Andhra Pradesh**¹, the challenge to the

¹ 2010(5) ALD 1

appointment of the appellant-5th respondent as a Member of the Trust Board of the 4th respondent-temple should succeed.

Sri K.S. Murthy, learned counsel appearing for the appellant, would draw our attention to the para-wise remarks said to have been submitted by the respondent-officials to the Government Pleader wherein there is a reference to a note. He would also contend that the note, which is now available with the appellant, discloses that the relative merits and demerits of each of the candidate was considered before the appointment was made; failure on the part of the respondent-officials, to place these facts before the learned Single Judge, could not result in his appointment being set aside, more so when his appointment is strictly in accordance with the Rules; even otherwise, while considering the relative merits and demerits of all the candidates, the respondent-officials are obligated to consider the case of the appellant-5th respondent also along with the other candidates whose applications, for being appointed as trust members, are under consideration.

On the other hand Sri D.V. Sitarama Murthy, learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner, would submit that the appellant-5th respondent had encroached upon temple lands exceeding Acs.6.00; the matter was pending before the Endowments Tribunal, when the order under appeal was passed; subsequently the Endowments Tribunal has, by order in O.A. No. 953 of 2010 dated 30.3.2017, held the appellant-5th respondent to be an encroacher; and since one of the disqualification, for being appointed as a Member of the Trust Board, is if the applicant has encroached upon temple lands, the appellant-5th respondent is not entitled to be considered for

appointment as a Member of the Trust Board. The submission of Sri K.S. Murthy, learned counsel, however is that the order of the Endowments Tribunal was subjected to challenge in writ proceedings before this Court, and the said order has been stayed.

The scope of interference in an intra-Court appeal, under Clause 15 of the Letters Patent, is extremely limited. It is only if the order under appeal suffers from a patent illegality, would this Court interfere. The learned Single Judge has passed an order on the basis of the material placed before him, and after perusing the records. If, as is now contended before us by Sri K.S. Murthy, learned counsel for the appellant, certain material and relevant documents were not placed before the learned Single Judge, that does not justify the order under appeal being set aside. The only remedy available to the appellant is to place these documents before the learned Single Judge invoking his review jurisdiction.

With regards the contention that the order under appeal does not prohibit the appellant's candidature being considered, the fact remains that, by the order under appeal, the learned Single Judge has only set aside G.O. Rt. No. 566 dated 18.5.2016 to the extent the appellant-5th respondent was appointed as a Trustee. The manner in which applications are now required to be considered is for the authorities concerned to decide in accordance with law. It would be wholly inappropriate for us to issue a mandamus to the authorities concerned to exercise their discretion in a particular manner. Needless to state that, after the applications are considered afresh and a decision is taken regarding appointment of the member of the Trust Board, it is

always open to either of the parties in this Writ Petition to question the same in appropriate legal proceedings.

As the challenge to the order of the learned Single Judge is based on material which was not placed before him, we would not be justified in exercising jurisdiction, under Clause 15 of the Letters Patent, to interfere. Leaving it open to the appellant-5th respondent to seek review of the order under appeal in accordance with law, the writ appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

27th April, 2017

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Date: 27.4.2017

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