

THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.16637 OF 2016

ORDER:

The writ petition is filed questioning the appointment of the 5th respondent as a trustee of the 3rd respondent temple as arbitrary, illegal and in violation of Sections 18, 19 and the procedure contemplated under the Appointment of Trustees Rules, 1987 (for short, "the Rules").

Sri D.V. Sitarama Murthy, learned senior counsel appeared for the petitioner submitted the following points:

- i) The petitioner is an ardent devotee of the 3rd respondent temple and the petitioner had also applied for being appointed as trustee to the 3rd respondent temple in response to the notification issued under Section 15 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, "the Act"). The petitioner is a person having interest as defined under Section 2 (18) of the Act.
- ii) The 5th respondent is an individual having a large number of criminal cases against him and he is not a fit person to be appointed as a trustee of the 3rd respondent temple.
- iii) The 5th respondent is an encroacher of the 6th respondent's - temple properties and as a matter of fact the 4th respondent vide his proceedings dated 05.07.2007, addressed to the Deputy Commissioner, requesting to register a case with respect to the illegal occupation of the properties of the 6th respondent temple and pursuant to which O.A.No.956 of 2010 was filed before the Endowments Tribunal against the 5th respondent seeking eviction of the 5th respondent from the lands belonging to 6th respondent temple to whom pattadar pass books were also issued.
- iv) The appointment of 5th respondent as a trustee is contrary to Section 19(1)(f) of the Act. In fact, the appointment was made solely based on the letter dated 01.03.2016 addressed by the Minister for Environment and Forest Science and Technology. Further, the appointment itself is

without considering the relevant factors particularly the credentials of the 5th respondent and by ignoring the disqualifications for such appointment. In appointing the 5th respondent, the 1st respondent had abdicated its duty and ignored the relevant factors and as such the appointment is liable to be set aside.

In sum and substance, the appointment of the 5th respondent as a trustee was made by ignoring the relevant consideration and for extraneous reasons, the appointment of the 5th respondent is liable to be set aside. The learned counsel for the petitioner had placed reliance on the judgment reported in **Pagadala Pratap and another vs. State of Andhra Pradesh and others**, to support his contentions.

Counter affidavits have been filed on behalf of the 1st respondent and the 5th respondent. In the counter affidavit filed by the 1st respondent, the allegations with respect to non application of mind and non consideration of the relevant material, have been denied. It is further asserted that in terms of the Rules, the competent authority has caused verification of antecedents of the applicants and taken into consideration of the report submitted by the Executive Officer, who had given a clean chit to the 5th respondent. Based on the material furnished by the Executive Officer and further based on the report submitted by the 2nd respondent dated 15.3.2016, with regard to the antecedents of the applicants, the 5th respondent and others were appointed as trustees of the 3rd respondent temple. As a matter of fact, the 4th respondent's report in relation to the 5th respondent's alleged encroachments and the pendency of O.A.No.956 of 2010, was taken into consideration before considering the application of the 5th

respondent. The pendency of O.A, was not considered as a disqualification as the allegation of the 5th respondent having encroached the land of the 6th respondent temple is an issue which is pending before the Endowment Tribunal and the 5th respondent is yet to be declared as an encroacher by the competent Tribunal under Section 83 of the Act and the 1st respondent is of the opinion that it would not be fair and reasonable to prejudge the guilt of the 5th respondent. There being any *malafides* have been specifically denied.

Learned Government Pleader for Endowments (A.P) also asserts that the recommendations of the Minister was not the sole basis and would point out that the petitioner has the grievance only against the 5th respondent and in that view of the matter, the proposal made by the Minister cannot be found fault. Learned Government Pleader made available the original file relating to the proceedings before the 1st respondent.

In the counter affidavit filed by the 5th respondent, the allegations of the petitioners have been refuted with an objection with regard to the petitioner having any interest either in the 3rd respondent temple or in the 6th respondent temple. It is further asserted that the petitioner had failed to place any material before the Court of his having participated in any of the rituals, festivities etc., of the temples and any contributions having been made with respect to the subject temples. As the petitioner is not a person interested having any *locus standi*, the writ petition is not maintainable. If the writ petition has to be treated as filed in public

interest, the petitioner having not satisfied the Public Interest Litigation Rules, 2015, the writ petition is liable to be dismissed. It is further asserted that the issue in relation to the allegation of the 4th respondent that the 5th respondent has encroached certain properties of the 6th respondent is in fact settled 45 years back and the challenge to the order of the Estate Abolition Tribunal, Chittoor, made by the 6th respondent was dismissed in W.P.No.2415 of 1969 on 19.10.1971. In spite of the same, the O.A.No.956 of 2010, was filed by the 4th respondent and at any rate the same is pending. The validity of the pattadars' pass books alleged to have been obtained by the 6th respondent is also *sub judice* on account of the appeal pending before the concerned Sub Collector. With the above allegations, the 5th respondent prays for dismissal of the writ petition.

Learned senior counsel appearing for the writ petitioner while placing reliance on the judgment of this Court in **Pagadala Pratap** (1 supra), would submit that the ratio laid down in the said judgment is squarely applicable to the facts of the present case. Like in the case reported, even in the case on hand, the appointment of the 5th respondent, was solely based on the recommendations of the Minister for Environment, Forest, Science and Technology. In deciding to appoint the 5th respondent as a trustee of the temple, 1st respondent miserably failed to take into consideration of the report of the 4th respondent - Assistant Commissioner and the fact that 5th respondent alleged to have encroached on to the properties of 6th respondent temple. He would further assert that the 1st respondent miserably failed to take

into consideration of the parameters specified in Sections 18 and 19 of the Act and failed to appreciate that the 5th respondent is suffering from the disqualification under Section 19(1) (e) and (f) of the Act.

Sri S. Sri Kantha Reddy, learned standing counsel for the 3rd respondent temple and the learned Government Pleader for Endowment, oppose the prayers in the writ petition contending that the procedure prescribed has been scrupulously followed by the authority and further contended that merely because a Minister has recommended the names of certain persons by itself cannot disentitle such persons for appointment as trustees. By placing reliance on para No.38 of the judgment cited by the learned senior counsel in **Pagadala Pratap** (1 supra), would contend that this Court had held that there is no absolute bar on a public representative to recommend persons whom they considered to be entitled for appointment as trustees of religious institutions.

Sri V. Surendra Reddy, learned counsel appearing for the 5th respondent, while vehemently opposing the prayer of the writ petition, raised specific objections with regard to the very maintainability of the writ petition. He would further submit that the allegation of the petitioner that the 5th respondent is an encroacher of the properties of the 6th respondent temple is an irresponsible allegation and the said issue is settled long back by virtue of the order dated 19.10.1971 of this Court in W.P.No.2415 of 1969 and also in other quasi judicial proceedings of revenue authorities. He would submit that even assuming that without

conceding that there are allegations against the 6th respondent, they are only mere allegations and there is no finding as of date that of his client being an encroacher and as a matter of fact the issue as to whether the 5th respondent was an encroacher is yet to be decided by the Endowment Tribunal before whom the O.A.No.956 of 2010, was filed by the 6th respondent temple is pending adjudication. It is further submitted that the Minister had not given any such letter and it is a fabricated one and further the petitioner did not reveal the sources of the letter. He contends that filing of the O.A by the Endowment Department itself is an abuse of the process of law especially in view of the fact that the issue relating to the property is settled long back. While dealing with the allegations about the 5th respondent's having criminal cases it is asserted that the 5th respondent being an active political leader now a days it is quite common false cases being foisted against the people in public life and there was never any conviction of the 5th respondent in all those cases. He would also contend that the petitioner had not come to the Court with clean hands and he is not a "person having interest" as defined in Section 2(18) of the Act, in the affairs of the 3rd respondent temple and as such the petitioner has no *locus standi* and prays for dismissal of the writ petition.

Having heard the respective parties the question that is required to be considered in the present case is whether the appointment of 5th respondent to the trust board of the 3rd respondent temple is liable to be interfered with on the ground that

the same is being vitiated for non consideration of the relevant particulars and for extraneous reasons.

The issue relating to appointment of trust board to Religious or Endowment Institutions, is governed by Section 15 and Sections 17 to 20 of the Act. There is no dispute that the 1st respondent is the competent authority to appoint the trust board in relation to the 3rd respondent temple. There is also no dispute that the 2nd respondent Assistant Commissioner vide letter dated 5.7.2007 addressed to the Deputy Commissioner, Endowments, had stated that the petitioner is in illegal occupation of the lands of the 6th respondent temple and requested the Deputy Commissioner, Endowment to initiate proceedings under Section 83 of the Act for eviction of the 5th respondent. It is also not in dispute that pursuant to the recommendation of the 4th respondent, O.A.No.956 of 2010, was filed seeking 5th respondent to be declared as an encroacher and consequential eviction is pending before the Endowments Tribunal. The relevant parameters which are required to be taken into consideration for an individual to be appointed as a trust board member of a religious institution, are specified in Sections 18 and 19 of the Act and the procedure that is required to be adhered to is contained in Section 17 of the Act. While Section 18 of the Act mandates the positive qualities which an aspirant is required to possess, Section 19 of the Act specifies the disqualifications of an aspirant disentitling him for being considered. It is worthwhile to extract Sections 18 and 19 of the Act, so far as relevant.....

“Section 18 Qualifications of Trusteeship

A person shall be qualified for being appointed as or for being a trustee of charitable or religious institution or endowment,-

- (a) if he has faith in God;
- (b) if he possesses good conduct, and reputation and commands respect in the locality in which the institution is situated;
- (c) if he has contributed for construction, renovation or development of any institution or performance of any Utsavam or Ubhayam or any charitable cause;
- (d) if he has sufficient time and interest to attend to the affairs of the institution; and
- (e) if he possesses any other merit.

Section 19 Disqualifications for trusteeship

(1) A person shall be disqualified for being appointed as, or for being, trustee of any charitable or religious institution or endowment -

- (a) if he is an undischarged insolvent;
- (b) if he is of unsound mind and stands so declared by a competent court or if he is a deaf-mute or is suffering from leprosy or any virulent contagious disease;
- (c) if he is interested either directly or indirectly in a subsisting lease of any property or of contract made, with, or any work being done for, the institution or endowment or is in arrears of any kind due by him to such institution or endowment;
- (d) if he is appearing as a legal practitioner on behalf of or against the institution or endowment;
- (e) if he has been sentenced by a criminal Court for an offence involving moral turpitude, such sentence not having been reversed;
- (f) if he has acted adverse to the interest of the institution or endowment;
- (g) if he is an office holder or servant attached to, or a person in receipt of any emolument or perquisite from such institution or endowment;
- (h) if he is addicted to intoxicating liquors or drugs;
- (i) if he has not completed thirty years of age : Provided that nothing in this clause shall apply to the trustee holding office immediately before the commencement of this Act;

Provided further, that every trustee who is below thirty years at the commencement of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Act, 2000 shall cease to hold office after the completion of his term of office.

- (j) if he does not profess Hindu religion in the case of religious institution or endowment; or
- (k) if he has held such office for two consecutive terms ;

Explanation :- The expression term' includes a part of the term.

(2) Before a trustee enters upon his office the Commissioner, Deputy Commissioner or Assistant Commissioner or any other person authorised by him in this behalf shall administer to him the oath of office and secrecy as may be prescribed.

(3) Any such trustee who fails to take, within thirty days from the date on which he was appointed, the oath of office and secrecy laid down in sub-section (2) shall cease to hold office.”

This Court had summarized the procedure and methodology that is required to be followed before a person being appointed as a trustee in its judgment reported in **Pagadala Pratap** (1 Supra). In

the said judgment this Court also had called for the file relating to the appointment of a trustee therein and as a matter of fact found that the relevant considerations for appointment of a trustee were not present. In the similar way, when the file is called for in the present case, the file discloses that the Executive Officer had sent a report on 20.01.2016 to the Commissioner of Endowment, summarizing the antecedents of each of the applicants who had responded to the notices. So far as the 5th respondent is concerned, the Assistant Commissioner had stated that “5. Sri Guvvula Ramakrishna Reddy, S/o G. Rami Reddy he is an Indian Hindu and belongs to Kapu (OC) by caste. He is residing at Tellaneellapalli Palli (Village), Gaddamvari Palli (P), Chowdepalli (M), Chittoor District. He is aged about 65 years. He is studied up to 10th class. He is doing cultivation. He has an agricultural income of Rs.2,00,000/- to Rs.3,00,000/- per annum. Previously he worked as Chairman of trust board to the subject temple during the years 2002 to 2004. He is a pious person and very much interested in the development of the temple. He does not possess any disqualifications laid down under Section 19(1) of the Act 30/87. He has attended in person during the verification of the antecedents.” The file also discloses that a representation dated 22.09.2015, submitted by the Archakas of 6th respondent temple to the Commissioner stating that 5th respondent had illegally in possession of the lands of the 6th respondent’s temple and also the 6th respondent had filed a case before the Endowment Tribunal and thus he is not a fit person to be considered for appointment of a trust board member. Along with the said representation, the

Archakas had enclosed the copy of the Caveat filed by the 5th respondent and others before the Senior Civil Judge, Punganoor against the Chairman-cum- Trustee of the 6th respondent temple and others. The Archakas also enclosed the copy of the report of the Assistant Commissioner with respect to encroachment of the land by the 5th respondent and letter addressed by the Assistant Commissioner dated 5.7.2007 to the Deputy Commissioner setting out the details of the alleged encroachment of the lands by the 5th respondent. File contains the copy of the proceedings in O.A. No.936 of 2010, filed by the 3rd respondent before the Endowment Tribunal against the 5th respondent. The file contains the copy of the legal reply notice dated 31.01.2007, issued on behalf of the 5th respondent in response to the legal notice on behalf of the 6th respondent temple. The file also contains certain complaints relating to S.K. Ramana Reddy and his wife. The letter dated 2.3.2016 addressed by Principal Secretary to the Chief Minister to the Principal Secretary to the Government for Revenue, enclosing the proposal letters received from Sri B. Gopala Krishna Reddy, Minister for E.F.S and T and Cooperation and Sri M. Venkata Ramana Raju, In-charge, Telugudesam Party, Punganoor constituency. The note file proceedings C.No.187959/Endts-II(1)2016 Rev(Ents.-II) Department is signed by the Assistant Secretary and the Minister for Endowment.

A perusal of the note put up for consideration of the Minister, does not disclose any discussion with regard to the relative merits of the applicants for appointment of trusteeship. There is also no discussion with respect to merits and demerits of the candidates

who are appointed for the trust board. While there is a mention about the representation received from the Archakas of the 6th respondent temple with regard to allegations against the candidature of the 5th respondent and one S.K. Venkata Ramana Reddy, there is absolutely no discussion with respect to the merits and demerits of the objections raised with regard to the candidature of the 5th respondent. The consideration of the Minister is "I have gone through the list of nominations to constitute a Non Hereditary Trust Board to Sri Boyakonda Gangamma temple, Diguvapalli (V), Chowdepalli Mandal, Chittoor District and found the following to be the good candidates who are dedicated to the development of the temple may be nominated". Thereafter the table of the members who are appointed in the impugned G.O are set out. In one word, this Court has no hesitation in recording a finding that there is absolutely no consideration whatsoever by the 1st respondent either with regard to qualification or disqualification of the 5th respondent. In the light of there being no discussion with respect to merits and demerits in considering the candidature of the 5th respondent as eligible for appointment as a trustee, the order of appointment suffers from non application of mind and ignoring consideration of the material on record. The record does not disclose that even any of the Executives i.e., the Executive Officer, Assistant Commissioner, Commissioner having made any effort 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. In this context, it is apt to quote the finding of this Court in judgment in **Pagadala Pratap** (1 supra) in para Nos.32 and 33.

“32. The competent authority, (in this case the Government), was therefore required to lay down a rational yardstick for determining who, among those found eligible for being appointed as trustees on verification of their antecedents, were the most meritorious. Only such of those applicants who not only fulfilled the qualifications prescribed in Section 18 of Act 30 of 1987, the conditions stipulated in the Trustees Rules, and did not suffer from any of the disqualifications stipulated in Section 19 of Act 30 of 1987, but were also found to be the most meritorious among the eligible applicants, (on the application of the rational criteria required to be prescribed by the Government), could alone have been appointed as trustees. Appointment of trustees under the impugned G.O. falls foul of and does not accord either with the provisions of Sections 15, 17, 18 and 19 of Act 30/87 or Rule 8 of the Trustees Rules.

33. In the present case, the Government has appointed the trustees without applying its mind to the relevant statutory provisions both under Act 30 of 1987 and the Trustees Rules. It has not caused a proper antecedent verification of the applicants to ascertain the correctness of the declaration made by them in their applications; has not ensured that they fulfilled the qualifications prescribed in Section 18 and did not suffer from any of the disqualifications stipulated in Section 19 of Act 30 of 1987; has not independently examined the candidature of each of the eligible applicants to appoint only the most meritorious among them; and has not considered the merits of any of the other eligible applicants, let alone determining their inter-se merit on a rational basis. The impugned G.O. issued by the Government, therefore, suffers from non-application of mind.”

The above quoted portions aptly applies to the case on hand and this Court cannot improve any further than making a reference to the above extracted paras. In the circumstances, the challenge to the appointment of the 5th respondent to the trust board of the 3rd respondent temple succeeds.

Accordingly, the writ petition is allowed setting aside the G.O.Ms.No.566, dated 18.05.2016, issued by the 1st respondent appointing the 5th respondent as a trustee to the 3rd respondent - Sri Boyakonda Gangamma Temple, as the challenge is limited to the 5th respondent appointment. However, it is open for the respondents 2 and 4 to consider the relevant material on record and fill up the gap arising on account of setting aside the selection of the 5th respondent. No order as to costs.

Miscellaneous Petitions, if any, pending in this writ petition, shall stand closed.

Date:13.04.2017,
Gk.

CHALLA KODANDA RAM,J

THE HONB'E SRI JUSTICE CHALLA KONDANDA RAM



WRIT PETITION No.16637 OF 2016

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Gk.