

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.27246 OF 2009

% 30th August, 2018

Harikishan Malani S/o Late Gopi Kishan Malani, Aged about 77 years, Occ: Business, R/o 10-3-150/151, (New) 36, East Marredpally, St. John Road, Secunderabad-26.

... Petitioner

AND

\$ The Government of Andhra Pradesh, Revenue (Endowments-II) Department, Secretariat, Hyderabad, rep. by its Principal Secretary to Government and another.

... Respondents

! Counsel for the Petitioner : Sri M. Vidyasagar

^ Counsel for the respondents : Learned Government
Pleader for Endowments (TS)

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> Head Note:

? Cases referred:



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 27246 of 2009

ORDER:

Assailing G.O.Rt.No.1689, Revenue (Endts.II) Department, dated 01.12.2009, issued by the 1st respondent, calling for applications for constituting the Board of Trustees to Sri Jagannadha Swamy Ramgopal Trust, Secunderabad, the present Writ Petition is filed.

The brief facts of the writ affidavit are that the petitioner is the son of late Seth Gopi Kishan Malani, who was one of the founder trustees of the 2nd respondent-Sri Jagannadha Swamy Ramgopal Trust (hereinafter referred to as "the Trust"), situated at M.G. Road, Secunderabad. The Trust was established in the year 1930, by Sri Gopi Kishan Muralidass Malani and Seth Sri Kishan Sukhdev Malani and registered vide PAC No.8, dated 24.01.1969, under Section 38 of the Endowments Act 17 of 1966. They established the Trust predominantly for a charitable purpose, however, three temples viz., Sri Jagannadha Swamy Temple at General Bazaar, Secunderabad, Sri Satyanarayana Swamy Temple at Hyderbasthi, Secunderabad and Sri Hanuman Temple situated at Lower Tank Bund Road, Hyderabad, constructed by them were also attached to the Trust. The Trust has number of choultries situated at various places like Deevan Bahadoor Seth Ramgopal Choultry at Vijayawada, Sri Ramgopal Malani Dharmashala at Prayag Ghat, Juna Mandir at Madhura and Sri Deevan Bahadur Seth Ramgopal Malani Dharmashala at Basara. In addition to this, certain movable properties were also endowed in favour of the Trust with a sole object that the Trust would function as a family trust and would continue its charitable and religious objectives

without there being any contributions from the public. As such, the entire expenditure for maintaining the choultries and celebrating the festivals in the temples is deriving from the properties endowed in favour of the Trust. Further, a perusal of 43-Register at Column No.4 shows that the name of the petitioner has been shown as one of the Chief Hereditary Trustees, recognized by the Endowments Department as successors-in-interest, to manage the subject institution, through original founders Sri Deevan Bahadoor Lakshmi Narayana Malani and others. After the death of Sri Gopi Kishan Malani, the petitioner along with his three brothers filed O.A.No.103 of 2009 before the Deputy Commissioner of Endowments, seeking declaration that the petitioner is a member of the family of founders of the Trust and also the successor-in-interest to Sri Gopi Kishan Malani. Pending adjudication of the same, the 1st respondent has issued the impugned G.O., calling for applications for constituting a Board of Trustees to the subject institution, without there being any power conferred upon it.

The Trust was registered under Section 6(a)(i) and 6 (a)(ii) of Act 30 of 1987 with an annual income of Rs.58,11,800-83 ps., as per the Assessment Report submitted by the 2nd respondent-Trust, represented by its Special Officer-cum-Assistant Commissioner of Sri Jagannadha Swamy Ramgopal Trust. Therefore, the impugned G.O. has been issued violating Section 15(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (in short "the Act"). Therefore, calling for applications for constituting a Board of non-hereditary trustee to the 2nd respondent trust is *ex-facie* illegal and the same is bad in law. Hence, the present Writ Petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Endowments (Andhra Pradesh).

The main issue involved in this Writ Petition is “Whether G.O.Rt.No.1689, dated 01.12.2009, issued by the 1st respondent is ultra vires the powers of the Government and whether it is sustainable in law?”

The source of power and method of appointing Trust Board is traceable to Section 15 of the Act. Section 15 of the Act reads as under:

“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.

(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 institutions is less than Rs.2 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:

Provided that the Deputy Commissioner may either in the interest of the institution or endowment or any other sufficient cause or for reasons to be recorded in writing appoint a single trustee instead of a Board of Trustees:

Provided further that in the case of a religious institution, the Archaka or where there is more than one Archaka, the Pradhana Archaka thereof shall be an ex-officio member of the Trust Board notwithstanding clause (g) of sub-section (1) of Section 19:

Provided also that where the Board of Trustees is not constituted for any reason, the recognized Founder or Member of the Founder’s Family shall discharge the functions of the Board of trustees till a new Board of Trustees is constituted:

Provided also that where there is no Executive Officer of Founder Family member to any institution or where the Government or the authority competent to constitute a Trust

Board has not constituted the Trust Board within the period specified under this sub-section, the Commissioner shall make such arrangement as he deems fit to look after the affairs of the institution during the interregnum period between the date of expiry of the terms of the Trust Board and constitution of the new Trust Board:

Provided also that one of the members of the Board of Trustees shall be a prominent donor with a long track record of Philanthropy and support to Hindu Religious Institutions.”

The Government, in exercise of powers under Section 152 of the Act, had also constituted the ‘Dharmika Parishad’. A close reading of Section 15 of the Act discloses that with respect to the institutions having income more than Rs. One crore, the Government is empowered to constitute a Board of Trustees, while the institutions having income between Rs.25 lakhs to Rs. one crore, the power has been conferred on ‘Dharmika Parishad’ to appoint a Board of Trustee. As a matter of fact, the Government had notified ‘Dharmika Parishad Rules, 2008’ vide G.O.Ms.No.1114, dated 16.09.2008. In other words, the power has been delegated in all respects to the ‘Dharmika Parishad’ to constitute a Trust Board or appoint a Trustee with respect to the institutions with income between Rs.25 lakhs to Rs. One crore. In that view of the matter, issuance of the impugned G.O. to constitute a Trust Board or to appoint a Trustee to the Trust of the 2nd respondent is *ultra vires* the powers of the Government.

In exercise of the powers conferred under Section 17 (3) read with 153 of the Act, the Appointment Of Trustee Rules, 1987 (in short “the Rules, 1987”) were notified. The procedure, method and manner of calling for applications and the authority to appoint trustees is set out in the Rules. Rule 3 of the 1987 Rules envisages the Assistant Commissioner for submission of a report to the authority competent to appoint trustees about the expiry of the

term of the existing Trust Board. On receiving such report, the authority competent to appoint trustees shall cause a notification issued in Form-I calling for applications from interested persons to be appointed as trustees. The application format is prescribed under Rule 2 as Form-I. The word 'authority competent to appoint trustees' is not defined either in the Act or in the Rules, particularly with respect to the appointment of trustees. However, it may be noted that Section 152 was amended by Act 33 of 2007, with effect from 03.01.2008, whereunder an independent body under the name of 'Dharmika Parishad' came into existence. Accordingly, Rules were also notified under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Dharmika Parishad Rules, 2008 (in short "the Rules"), constituting a Dharmika Parishad. The powers that are exercisable, composition of Dharmika Parishad with such members, as specified in Section 152 (1) (i) to (ix) of the Act, the functions, term of the office etc., are prescribed by the Rules notified vide Preliminary Notification i.e., G.O.Ms.No.1114, dated 16.09.2008 and terminated finally vide notification in G.O.Ms.No.1206 dated 24.11.2009.

Section 15 (1) read with Rule 4 of the Appointment of Trustees Rules, 1987, leaves no manner of doubt that the authority competent to appoint trustees, though not defined, is 'Dharmika Parishad', by following the procedure prescribed in the Rules. In those circumstances, in the present case, the Notification issued by the Government is *ultra vires* the powers of the 1st respondent and accordingly, the same is liable to be set aside.

The arguments of the learned Government Pleader for Endowments (Telangana) that on account of the Andhra Pradesh Reorganisation Act, 2014 (in short, “the Reorganisation Act”) and constitution of the new State, the procedure prescribed under the Reorganisation Act has no application, is liable to be rejected, as there is no dispute that the Reorganisation Act has been adopted in terms of Section 101 thereof. It may also be noted that by Amendment Act 33 of 2007, Section 15 came to be amended to the extent, where the number of trustees, wherever 9 was occurring was increased to 14, 5 was increased to 7, 3 was increased to 5, implying that there are no statutory changes so far as the content or the procedure and with respect to the appointment of trustees. In this context, the statement of the objects and reasons while introducing the Legislative Assembly Bill No. 12 of 2016, dated 30.08.2016, seeking amendment of Section 15 may be noted, which reads as under:

“As per sub-section (1) of section 15 of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987, the Government shall constitute a Board of Trustees consisting of nine persons where the income for the institution exceeds Rupees one crore per annum; where the income of the institution is between Rs.25.00 lakhs to Rupees One Crore per annum, the Dharmika Parishad shall constitute a Board of Trustees consisting of nine persons. As per sub-section (2) of the section 15 of the said Act, where the income of the institution is between Rs.2.00 lakhs to Rs.25.00 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.

It is felt necessary to increase number of Board of Trustees, so as to provide an opportunity to more number of persons who have the necessary aptitude, dedication, qualifications and competence to work on the Trust Board of various Charitable and Religious Institutions and Endowments. It is accordingly proposed to increase the number of trustees from 09 to 14 members where

the income of the institution is above Rupees One Crore per annum or between Rs.25.00 lakhs to rupees one crore per annum, 05 to 07 members where the income of the institution is between Rs.2.00 lakhs to Rs.25.00 lakhs per annum; and 03 to 05 members where the income of the institution is less than Rs.2.00 lakhs per annum.

This bill seeks to give effect to the above decision.”

In those circumstances, the Writ Petition is allowed, declaring that the notification issued is *ultra vires* the powers of the Government. There shall be no order as to costs.

Consequently, the miscellaneous applications, if any, shall stand closed.

CHALLA KODANDA RAM, J.

Date:30.08.2018.

Note: LR copy to be marked.

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