

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal Nos.619 & 643 of 2018

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

These appeals are preferred, under Clause 15 of the Letters Patent, both by the petitioners and the 1st respondent in W.P. No. 1244 of 2018.

This case has had a chequered history. The parties herein had earlier invoked the jurisdiction of this Court by way of W.P. Nos. 23719 and 21894 of 2013 and 20704 and 23243 of 2015 all of which were disposed of by a common order dated 22.3.2017, and the aggrieved person was directed to approach the Endowments Tribunal, and seek redressal of their grievance within a period of four weeks from the date of the order along with an interim application; and the Endowments Tribunal was directed to decide the same within a period of four weeks thereafter. Till such time, the interim order granted in W.P.M.P. No. 29160 of 2013 in W.P. No. 23719 of 2013 dated 19.8.2013 was to remain in force.

Pursuant thereto, the appellant in W.A. No. 619 of 2018 approached the Endowments Tribunal by filing O.A. No. 541 of 2017. The Endowments Tribunal passed an interim order in I.A. No. 1045 of 2017 in O.A. No. 541 of 2017 dated 3.1.2018 wherein it observed that the petitioner (the appellant in W.A. No. 619 of 2018) was doing archakatvam service in the subject temple continuously, even before the dispute was raised by respondents 5 to 8 (appellants in W.A. No. 643 of 2018); the balance of convenience was in favour of the appellant in W.A.

No. 619 of 2018; and, basing on the documents filed by him, irreparable loss would occur if the same was not allowed to him. The Endowments Tribunal, therefore, allowed the Interlocutory Application directing the appellants in W.A No. 643 of 2018 to allow the appellant in W.A No. 619 of 2018 to perform archakatvam service in the subject temple. The appellants in W.A. No. 643 of 2018 were also directed not to obstruct the archakatvam service of the petitioner(appellant in W.A No. 619 of 2018) as per his turn for six months from Sravana masam to Magha masam except Pushya masam, as per the custom and usage, every year until disposal of the O.A. Aggrieved thereby, the appellants in W.A. No. 643 of 2018 invoked the jurisdiction of this Court by filing W.P. No. 1244 of 2018 seeking a mandamus to declare the order passed by the Endowments Tribunal, in I.A. No. 1045 of 2017 in O.A. No. 541 of 2017 dated 3.1.2018, as illegal, arbitrary and unjust.

In the order under appeal, the learned Single Judge observed that the concept of a Deputy Archaka was unknown to the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987, including the amended Act 33 of 2007; Archaka was an Archaka; the question whether the will was forged and fabricated, and whether the executant had died prior to the date of the will, were not to be examined at that stage; as the appellant in W.A. No. 619 of 2018 was continued as an Archaka ever since 1985, he could be continued as an Archaka without going into the correctness of the will dated 24.3.1954 pending disposal of the O.A; but he could not be allowed a share in the properties given for the hereditary archakatvam service, as that did not affect his right of rotation. The endowment-authorities were directed to continue the appellant in W.A. No. 619 of 2018, without disturbing the right of rotation of the other four hereditary archakaas, as he was otherwise entitled to continue as an archaka in any of the five sub-temples. The

Writ Petition was disposed of making it clear that the merits of the dispute had not been examined. Aggrieved by the order under appeal, both the petitioners and the 1st respondent in W.P. No. 1244 of 2018 are in appeal before us.

Sri M.R.S. Srinivas, learned counsel for the petitioners in W.P. No. 1244 of 2018 (appellants in W.A.No.643 of 2018), would submit that the Endowment Tribunal had not even examined whether a *prima facie* case had been made out by the 1st respondent in the Writ Petition, and had passed the interim order solely on the basis of the earlier interim order passed by this Court; the Tribunal was obligated to consider whether a *prima facie* case had been made out for grant of the interim relief; it was the petitioners' specific case that the will, on which reliance was placed by the 1st respondent in the Writ Petition, was forged; the claim of the 1st respondent was that he was entitled to be appointed as an Archaka on his father's demise; this claim was made in 1985 even though the father of the 1st respondent in the Writ Petition (appellant in W.A. No. 619 of 2018) died much later in the year 1997; and without examining any of these contentions, both the Tribunal and the learned Single Judge had permitted the 1st respondent in the Writ Petition to be continued as an Archaka.

On the other hand, Sri M. Vidya Sagar, learned counsel for the 1st respondent in the Writ Petition, would submit that the Tribunal had only continued the earlier interim order passed by this Court; and in a Writ Petition, filed against the said order, it was not open for this Court to substitute its views for that of the Tribunal or to make an arrangement contrary to what was made by the Tribunal during the pendency of the O.A.

From the counter-affidavit, filed on behalf of the temple by its Executive Officer, it is evident that the Archakatvam was being conducted by the respective families as per the arrangement made by the temple authorities, which is as under:

Sl. No.	Name of the Archaka	Period
1	Pothuri Vijaya Sankara Rao, S/o. Lakshmi Kantha Rao	3 months
2	Chavali Hanuma Kumar, S/o Radha Krishna	2 months
3	Pothuri Venkata Suresh, S/o. Satyanarayana	3 months
4	Penumudi Venkata Subba Rao, S/o. Satyanarayana	2 months
5	Penumudi Venkata Koteswara Rao, S/o. Butchi Venkaiah	2 months

It is this arrangement that continued, right through during the pendency of W.P. No. 23719 of 2013 and batch, ever since an interim order was passed on 19.8.2013 till the Writ Petitions were finally disposed of more than three and half years thereafter on 22.3.2017. While granting liberty to the parties to approach the Endowments Tribunal, the learned Single Judge had directed the said interim order to continue. The O.A. was instituted thereafter, and the interim order passed by the Tribunal required the situation, which prevailed earlier during the pendency of the batch of Writ Petitions, to be continued till the O.A. was finally decided.

The Tribunal is the final Court of fact. In judicial review proceedings, under Article 226 of the Constitution of India, this Court would neither sit in appeal over the order passed by the Tribunal nor would it substitute its views for that of the Tribunal. In the earlier

round, the learned Single Judge had rightly relegated the parties to approach the Tribunal, since this Court would not, ordinarily, undertake an examination of disputed questions of fact. The questions of fact raised before the learned Single Judge, resulting in the order under appeal being passed, and which are again raised before us, can only be adjudicated by the Tribunal; and it is only thereafter would these questions necessitate examination by this Court within the limited parameters of judicial review. This Court, in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, would not disturb an interim arrangement which has been in force from 19.08.2013 for the past four and half years.

Sri M.R.S. Srinivas, learned counsel for the appellants in W.A. No. 643 of 2018, would submit that, while a scheme of rotation of Archakatvam was no doubt prescribed by the authorities concerned, the appellant in W.A. No. 619 of 2018 was insisting that he be given archakatvam rights for the two months of his choice, every year, during Kartika masam, and more particularly during Maha Shivaratri. Sri M. Vidya Sagar, learned counsel for the appellant in W.A. No. 619 of 2018, would however deny that the appellant in W.A. No. 619 of 2018 had ever insisted on such an arrangement.

It would be wholly inappropriate for us to deal with any of the contentions urged before us, as the main O.A. is still is pending adjudication before the Endowments Tribunal. Suffice it, therefore, to direct that to the extent the Endowments Tribunal has directed continuance of the earlier interim order passed by this Court, the said order would not justify interference in the exercise of the power of judicial review, under Article 226 of the Constitution of India, in as much as the discretion exercised by the Tribunal, in granting the

interim relief sought for, cannot be said to be either perverse or as patently illegal, to the extent the interlocutory order passed by the Endowments Tribunal is the same as the interim order passed by this Court in W.P. No. 23719 of 2013 on 19.08.2013 which continued to remain in force till the Tribunal passed the interim order which is impugned in the Writ Petition.

We consider it appropriate, therefore, to set aside the order under appeal and direct that, pending disposal of the O.A. by the Tribunal, the interim order passed by it on 3.1.2018 shall, to the extent it is in accordance with the interim order passed by this Court earlier on 19.08.2013, continue to remain in force. To put an end to this unseemly controversy between members of a family, fighting over their rights to offer prayers to the Lord, we direct the Endowments Tribunal to dispose of the O.A. with utmost expedition and, in any event, within six months from the date of receipt of a copy of this order.

Both the Writ Appeals are, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

23rd April, 2018

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Date:23.04.2018

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