

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.28068 OF 2007

ORDER:

Tatikonda Brahma Lingaswamy, the Regional Chairman, Association of Founders of Hindu Religious Institutions, Zone-I, Visakhapatnam filed this writ petition to issue a Writ of Mandamus declaring the Memo No.K3/33700/2007, dated 27.11.2007 issued by the second respondent, as illegal, arbitrary, violative of Articles 14, 16 and 26 of the Constitution of India and contrary to Section 2(h) of the Right to Information Act, 2005 (for short 'R.T.I. Act'), and consequently to declare that the Religious Institutions do not come under the purview of R.T.I. Act.

2. The case of the petitioner is that he is a member of Founder's Family of Sri Venkateswara Swamy Temple, Narsipatnam. The State has enacted the Andhra Pradesh Charitable and Religious Institution and Endowments Act, 1987 (for short 'Act 30 of 1987') to consolidate and amend the Law relating to the administration and governance of Charitable and Hindu Religious Institution and Endowments in the State of Andhra Pradesh. The provision of Section 23 of the Act 30 of 1987 deals with the powers of the Trustee. According to Section 23 of the Act 30 of 1987, the trustee of every Charitable and Religious Institution or Endowment has to administer its affairs, management, its property and usage

of the institution or endowment. As per Section 29(3) of the Act 30 of 1987 as amended by the Act 33 of 2007 which came into force w.e.f. 03.01.2008 envisages that the Executive Officer appointed under this Section shall be responsible for carrying out all lawful directions issued by such trustee from time to time. However, the Commissioner of Endowments issued Memo No.K3/33700/2007, dated 27.11.2007, stating that all Hindu and Religious Endowments Institutions come under the purview of the R.T.I. Act. By issuing the impugned Memo, the Commissioner has exceeded his jurisdiction. Thus, the impugned Memo cannot stand for judicial scrutiny and is liable to be struck down.

3. The Commissioner, Endowments Department – 2nd respondent filed counter stating that the writ petition is filed challenging the Memo No.K3/33700/2007, dated 27.11.2007 issued by the 2nd respondent regarding applicability of the provisions of the Right to Information Act to Endowments and Religious Institutions. The hereditary trusteeship is abolished under Section 16 of the Act 30 of 1987. As there are no hereditary trustees, all the trustees are appointed or nominated by the authorities authorized by the Act 30 of 1987 basing upon the income of the temple or institution for a period of two years. Section 17(1) of the Act 30 of 1987 says that the Founder or one of the members of the family of the Founder if qualified as prescribed shall be appointed as one of the trustees. Further, according to Section 1(3) of the

Act 30 of 1987, Government exempted the Temple from the operation of Sections 15 and 29 of the Act. The Commissioner of Endowments Department is only an administrative authority under Section 8 of the Act 30 of 1987, limited to administration of Temple/Institution. The Hindu Religious and Charitable Institutions are not receiving funds from Government for its administration as well as governance. Further, some of the rituals are being performed in the temples as per Agama Sastra and varies from temple to temple and that the details of performance of such rituals as per Agama should not be revealed to anybody and consequently R.T.I. Act cannot be applicable to those details and it cannot be furnished to the public. Hence, the impugned memo is liable to be rechecked.

4. Sri K.Govind, learned counsel for the petitioner, would contend that Sri Venkateswara Swamy Temple, Narsipatnam is not a public authority as defined under Section 2(h) of the R.T.I. Act. The provisions of the R.T.I. Act are not applicable to the temple and no information could be furnished under R.T.I. Act. He placed his reliance on the decision of the Hon'ble Apex Court in the case of *Thalappalam Ser. Coop. Bank Ltd. and others Vs. State of Kerala and others*¹, wherein while considering the definition of 'public authority' as defined under Section 2(h) of the Act, held that Cooperative Societies registered or deemed to be registered under the

¹ 2013(2) SCALE 527

Cooperative Societies Act will not fall within the definition of 'public authority'. The Commissioner of Endowments has no power or authority to issue the impugned memo, making the provisions of the R.T.I. Act applicable to all the Hindu Religious Endowment Institutions to come under purview of this Act as the Commissioner is only an administrative authority as contemplated under Section 8 of Act 30 of 1987. Hence, the impugned memo is liable to be set aside.

5. Per contra, while reiterating the contentions of the counter-affidavit, the learned Government Pleader for Endowments (AP) would contend that that provisions of R.T.I. Act are applicable to the Endowment Institutions and the Commissioner of Endowments has every power to issue the memo and there is no irregularity or illegality in issuing the memo making applicable the provisions of the R.T.I. Act to the Endowment Institutions.

6. In the facts and circumstances of the case and in considered view of this Court, Sri Venkateswara Swamy Temple, Narsipatnam represented by the petitioner, is not the public authority as defined under Section 2(h) of the R.T.I. Act as per the decision stated (1 supra) and the institution is not receiving any funds from the Government nor it is the custodian of any public authority and the provisions of the R.T.I. Act are not applicable to the Endowment Institutions.

Hence, it is concluded that the impugned memo is not applicable to the petitioner's Temple.

7. Accordingly, the writ petition is disposed of, giving liberty to the respondents to revisit the impugned memo dated 27.11.2007 and take appropriate action as per law. No order as to costs.

8. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

02-05-2018
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