In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

WRIT PETITIONS No. 21677 of 2007 & BATCH

Between:

G. Rajenderanath Goud

... Petitioner

and

The Government of Andhra Pradesh,

Rep. by its Secretary, Endowments Department & others

...Respondents

Date of Judgment Pronounced: 14-11-2018
Submitted for Approval:

The Hon'ble Sri Justice CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wish to see the fair copy of the Judgment ? Yes/No

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(CHALLA KODANDA RAM, J)

*** The Hon'ble Sri Justice CHALLA KODANDA RAM**

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…Respondents

! Counsel for the petitioners : Sri K. Govind, Sri Ch. Satish Kumar, Sri Sreekanth Reddy Ambati, Sri P.Rajasekhar, Sri T. Sanjay Rao, Sri Venugopal Reddy, Sri V.S.K. Rama Rao, Sri K.R.Pbabhakar, Sri V.V.N. Narayana Rao, Sri V. Venugopala Rao, Sri M. Jayaram Reddy, Sri K. Muralidhar Reddy, Sri Sudarshan Reddy Duddugunta, Sri D.V. Sasidhar, Sri P. Yadagiri Rao, Sri Goparaju Ravi, Smt. K. Lalitha (SC for Endowments), A.Sreekanth Reddy(SC for Endowments).

^ Counsel for the respondent : GP for Endowments, Sri S.S. Varma, Sri N. Subba Rao, Sri Venugopala Rao, Sri N. M Ranga Rao

<GIST:

>HEAD NOTE:

?1. 2011 Law Suit (Kerala) 690

2. AIR 2010 Andhra Pradesh 127

3. (2002) 25 ITR 123 (Delhi)

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.Nos. 21677 of 2007, 1504, 7469, 7471, 943 and 9580 of 2008, 19399 of 2011, 23354, 29396, 29858, 32702, 32934, 39731, 6560 of 2012, 11142, 11164, 12661, 13005, 20228, 21737, 23441, 26454, 31279, 36210, 36692, 38114, 38309, 5823, 190 of 2013, 12886, 12890, 188, 23068, 23443, 25472, 25473, 25474, 25837, 26454, 27649, 34117, 36406, 37738, 38424, 38939, 39427, 39822, 40414, 40804, 9036, 9045, 9102, 9104 of 2014, 10473, 20291, 27280, 39603, 4311, 5207, 9480 of 2015, 10045, 12741, 11067, 11734, 13381, 17412, 17965, 19199, 19976, 19992, 22519, 26851, 34053, 4717, 9121 of 2016, 10790, 11798, 20570, 22178, 3833, 38757, 6429 of 2017, 11615, 12495, 12538, 14988, 18865, 18869, 18942, 19468, 8994, 20195 and 9202 of 2018

COMMON ORDER :

These Writ Petitions filed by various religious institutions, charitable endowment trusts and some of the trustees / Executive Officers of temples are heard together, as, they all, in essence, questioned either invocation of the provisions of the Right to Information Act, 2005 (for short, 'the 2005 Act') with respect to their organizations or the circulars issued by the government directing the respective organizations to designate and constitute 'Public Information Officers' and other officers to operationalize the mechanism for providing information under the 2005 Act.

Insofar as State of Telangana is concerned, counter-affidavits filed in W.P.No. 21677 of 2007 is requested to be taken as a common counter-affidavit in all the Writ Petitions and insofar as the State of Andhra Pradesh is concerned, they have also filed a common counter-affidavit, to be treated as the one in respect of all the Writ Petitions. In addition, on behalf of the State of Andhra Pradesh, the letter addressed by the Commissioner, Endowments Department, to the learned Government Pleader bearing No. Lr.In.RC.No.U1/Courts/13703/2012, dated 20.07.2018 was placed on record. The essence of the said letter is that the 2005 Act cannot be made applicable to the details regarding rituals that are being performed in the temples as per *Agama Sastra.* In the said

communication, it was further stated that there is no governmental / budgetary support to the temples / religious or charitable institutions and hence, they are not receiving any funds from the government either for its administration or governance and further the government has no role in establishing the temples or religious institutions.

In all these cases, the issue raised being purely a question of law, ie. to deal with interpretation of the provisions of the 2005 Act or some or the other provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short, 'the Act'), it is not necessary to set out, in detail, the factual scenario. However, for convenience sake, the prayer, averments in the affidavit filed in support of Writ Petition No. 21677 of 2007 and the stand taken by the respondents in their respective counter-affidavits are briefly summarized hereunder:

"To declare the proceedings in Rc.No. K3/32011/07, dated 27.09.2007 of the 3rd respondent Commissioner, Endowments Department, whereby the Executive Authority of *Sri Venkateswara Swamy Devasthanam, Chikkadpally* was requested to furnish the information sought by the applicant - the 4th respondent herein directly as per Rules under Section 6(3)(ii) of the Right to Information Act, 2005, under intimation to the said office, as arbitrary and illegal and consequently, to declare that the subject temple is not a 'public authority' under the 2005 Act, the petitioner who is a Founder Family Member, filed the Writ Petition."

The case of the petitioner is that his paternal grandfather late *Sri Gudidevuni Jangaiah Goud* constructed the subject temple

and he was the founder of the same. While so, the Deputy Commissioner of Endowments declared the petitioner as hereditary trustee, by order dated 23.05.1987 in O.A. No. 1 of 1987. According to the petitioner, Section 23 of the 1987 Act governs the powers of the trustee to administer the affairs, management and the properties of the temple.

While the matter stood thus, it is the further case of the petitioner that the 4th respondent herein applied to the Executive Officer of the subject temple seeking information under the 2005 Act and the Executive Officer, in turn, sought clarification from the Commissioner of Endowments. The 3rd respondent Deputy Commissioner *vide* proceedings impugned, requested the Executive Officer to furnish the information as sought by the 4th respondent. It is also the further case of the petitioner that though Act 22 of 2005 was enacted to provide information to the citizens, to curtail corruption and to hold governments and their instrumentalities accountable, the subject temple is not an instrumentality of the State and the Executive Officer is not a 'public authority', as defined under Section 2(h) of the 2005 Act.

The 2nd respondent had filed the counter-affidavit stating that the subject temple is a public religious institution and it has been published under Section 6(a)(ii) of the 1987 Act and the Executive Officer is responsible for the administrative functions of the temple. The 4th respondent, who is the brother of the petitioner– founder family member, had filed O.A.No. 10 of 2006 before the Deputy Commissioner to recognize him as Member of the founder family of the subject temple and during the course of

enquiry, the 4th respondent had filed an Application under the provisions of the 2005 Act seeking certain information regarding the affairs of the temple. It is stated that since there is a statutory obligation on all the public authorities to comply with the provisions of the 2005 Act, the Office of the Commissioner, had directed the Executive Officer to furnish the information as the information sought is very much available in the Office. It is further stated that Section 29(5)(a) of the 1987 Act reads *"The Executive Officer appointed under this Section shall be under the administrative control of the trustee of the institution or endowment and shall be responsible for carrying out all lawful directions issued by such trustee from time to time"*. It is the ultimate case of the 2nd respondent that the petitioner is a vexatious litigant and as of now, as many as 20 to 30 Writ Petitions filed by him are pending adjudication and the 4th respondent is rightly entitled to seek the information required under the 2005 Act.

The petitioner filed the reply-affidavit denying the counter-allegations made by the 2nd respondent.

Heard Sri R. Raghunandan Rao, learned Senior Counsel who elaborated and supported the arguments of Sri K. Govind, Sri Ch. Satish Kumar, Sri Sreekanth Reddy Ambati, Sri P. Rajasekhar, Sri T. Sanjay Rao, Sri Venugopal Reddy J., Sri V.S.K. Rama Rao, Sri K.R. Prabhakar, Sri V.V.N. Narayana Rao, Sri V. Venugopala Rao, Sri M. Jayaram Reddy, Sri K. Muralidhar Reddy, Sri Sudarshan Reddy Dudduguntа, Sri D.V. Sasidhar, Sri P. Yadagiri Rao, Sri Goparaju Ravi, Smt. K. Lalitha, learned Standing Counsel for Endowments (Andhra Pradesh),

Sri A. Sreekanth Reddy, learned Standing Counsel for Endowments (Telangana), learned Government Pleader for Endowments for both the States, Sri S.S. Varma, Sri N. Subba Rao, Sri Venugopala Rao, Sri N.M. Ranga Rao for the unofficial respondents opposing the grant of relief prayed for in the Writ Petitions. In Writ Petition No. 39427 of 2014, Sri Patibandla Prabhakar, learned counsel contends that the petitioner is the water tank popularly known as *'Munagalavari Cheruvu, Kollipara',* represented by the hereditary trustee. Hence, it does not fit in the definition of 'public authority'. In Writ Petition No. 13550 of 2013, Sri Rajsekhar, learned counsel submits that the petitioner is a math, as defined under Section 2(17) of the 1987 Act, governed by Sections 47 and 48 thereof. According to him, the Executive Officer, under Section 29(3)(c) has to function under the trustees or Trust Board. Though appointed by the government, the Executive Officer is under the control of the Trust Board, and that they are not under the control of the Commissioner. He places reliance on Sections 6, 14, 15 of the said Act.

All the learned counsel, in unison, placed reliance on the Division Bench judgment of Kerala High Court in ***Bhanunni v. Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department***[1] apart from other judgments as they squarely cover the issue in their favour.

After advancing arguments, to assist the Court, *Smt. K. Lalitha,* learned Standing Counsel appearing in large

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[1] 2011 Law Suit (kerala) 690

number of Writ Petitions, has formulated the following issues for consideration of this Court:

1) What is the purport and scheme of the Right to Information Act, 2005?

2) Who is a public authority as defined under Section 2(h) of the Right to Information Act? Whether the Temple falls within the ambit and scope of the definition of 'public authority'?

3) Whether the Commissioner has the power to issue the impugned memo treating the temple as an administrative unit under Section 5 of the Act?

4) Whether the Commissioner and other officers of the Endowments Department being the public authorities are duty-bound to give any information pertaining to the temple?

5) Whether it can be said that by virtue of the provisions of the 1987 Act, particularly in view of Sections 18, 23, 87 and 157, the affairs and information in relation to the temple can be brought within the purview of the Right to Information Act or not.

It is the emphatic contention of all the learned counsel for the petitioners that temples / charitable institutions do not answer the description 'public authority', as defined under Section 2(h) of the 2005 Act, hence, there is no obligation on Trustees, Chairpersons, Trust Boards and Executive Officers of the subject institutions to respond and furnish 'information' in relation to the temples / institutions under the RTI Act.

At the outset, it may be noted that the various High Courts and the Supreme Court held that the 2005 Act does not have any application with respect to a temple, whether the same is under the control of the Endowments Department or otherwise. The reasoning given in all the above judgments is based on the definition of 'Public Authority' under Section 2(h) of the 2005 Act, which is required to be established or constituted – (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued

or order made by the appropriate Government, and includes any- (i) body owned, controlled or substantially financed; (ii) non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate government. It may also be noted that Section 4, casts certain obligations on public authorities, more specified in sub-section (1)(a)&(b). A close scrutiny of the details mentioned therein, when read conjointly with the definition under Section 2(h), leaves no manner of doubt that a 'public authority' must necessarily be a body or institution in contra-distinction to an individual officer or a public servant as normally understood; for example, an Executive Officer, a District Collector, Commissioners under various enactments, a bank manager, etcetera. The individual-designated authorities may be officers / managers of an institution, who may be responsible under their respective charter/constitution to be in possession of or to maintain records etc. containing information, but by that itself, the said designated officers cannot be said to be public authorities for the purpose of the 2005 Act. This would also become clear on account of the obligation cast on the public authority {a body or institution satisfying the ingredients as defined under Section 2(h)} to designate Public Information Officers, Assistant Public Information Officers, Senior Officers in all their administrative units / offices, as otherwise, it would be meaningless for the officer to impose obligation on self and create a structure of Public Information Officer, Assistant Public Information Officer, etcetera besides maintaining various records. In those circumstances, the words 'Public Authority' (not Public Authorities) appearing in Section 4 have to be given a restrictive

meaning. It may be noted that Section 2 begins with "In this Act, unless the context otherwise requires—". In the context of the statutory scheme of the Act, what is required to be considered is 'whether a temple would satisfy the parameters prescribed under the Act to be termed as 'public authority' as defined under Section 2(h)'.

On a close examination of Section 2(h), applying the tests laid in the definition, it would be clear that the same does not fall under Section 2(h)(a)(b) and (c) as the temple is not established or constituted by or under the constitution, or by any other law made by the Parliament or State Legislature. The establishment or running the affairs of the temple cannot be said to be either owned or controlled or substantially financed by the government. Though a temple could be said to be a non-governmental organization, as it does not depend for its finances, in any away, much less substantially, on the government either directly or indirectly, the same is also outside the purview of Section 2(h)(d)(ii). In this context, the argument of the learned counsel Sri N. Subba Rao, to bring a temple within the scope of RTI Act requires to be examined. Sri Subba Rao makes a reference to the definition of 'person having interest' under Section 2(18) of the 1987 Act to contend that a devotee is a 'person interested' and keeping in view the objects of the enactment of the 2005 Act, a devotee is entitled to obtain the information within the parameters specified under the said Act. Further, under Section 6, every temple with a specified income is required to be registered and it has to maintain certain records in relation to the properties and various other aspects specified under the Act and under Sections 23, 87(4), the State Government /

Commissioner / Dharmik Parishad are entitled to constitute Board of Trustees, the governing bodies, Executive Officer person-in-charge for managing the affairs of the temple which establish a deep and pervasive control of the government with respect to the affairs of the temple thereby equating a temple with the public authorities / State Organization as normally understood under Article 12 of the Constitution of India. To examine the above argument, one may notice relevant sections as quoted by the learned counsel:

> " ***23: Powers of trustee:*** (1) The trustee of every charitable or religious institution or endowment shall administer its affairs, manage its properties and apply its funds in accordance with the terms of the trust, the usage of the institution or endowment and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, fund and properties if they were of his own.
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> (2) A trustee shall, subject to the provisions of this Act, be entitled to exercise all powers incidental to the prudent and beneficial administration of the charitable or religious intuition or endowment and to the performance of the functions entrusted to him.
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> (3) A trustee shall not spend the funds of the charitable or religious institution or endowment for meeting any costs, charges or expenses incurred by him in any suit, appeal or application or other proceedings for or incidental to the establishment of his appointment to or removal from office or any disciplinary action taken against him:
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> Provided that the trustee may reimburse himself in respect of such costs, charges and expenses if he is specifically permitted to do so by an order passed under Section 136.
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> ..... .
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> ***87: Power of Endowments Tribunal to decide certain disputes and matters: (4)*** The presumption in respect of matters covered by clauses (a), (b), (c), (d) and (e) in sub-section (1) is that the institution or the endowment is a public one and that the burden of proof in all such cases shall lie on the person claiming the

> institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment, as the case may be."

The argument of the learned counsel so far as the power of the State or its authorities with respect to monitoring certain affairs of the temple cannot be denied, however, the question which begs consideration is whether, in the first instance, the institution itself falls within the definition of 'public authority', as defined under the Act and not as understood either in general parlance or for the purpose of Article 12 / 226 of the Constitution which expanded the parameters of the 'State'. The answer would be a definite 'no' on account of the statutory provisions restricting the scope and authority in the Act. This answers Point Nos.1, 2 and 5.

So far as point Nos. 3 and 4 are concerned, once point Nos. 1, 2 and 5 are answered in the negative, it cannot be said that the Commissioner is vested with the power to direct temples to establish a hierarchy required to be established under Section 5 of the Act by notifying Public Information Officers / Assistant Public Information Officers / Senior Officers. As a matter of fact, a Division Bench of Kerala High Court in ***Bhanunni's case*** (cited supra) held that the Hindu Religious Institutions and endowments are not the 'public authorities' as defined in the RTI Act and the provisions of that Act do not apply to those institutions and their offices, officers and employees and the Executive Officer, if any appointed by the government. In Writ Petition No. 28068 of 2007, the learned Single Judge of this Court had also taken the view that Sri *Venkateswara Swamy Temple, Narsipatnam* represented by the petitioner therein is not the 'public authority', as defined under

Section 2(h) of the 2005 Act and the provisions of the said Act are not applicable to the Endowments Institutions and hence, it is concluded that the impugned memo is not applicable to the petitioner's temple.

Though there may be officers in organization but they do not fit into the definition of 'public authority' by applying the principle of *ejusdem generis.*

Further, in ***Sri Bhavana Rishi Co-op. House Building Society v. A.P. Information Commission[2],*** a learned Single Judge of this Court held that a cooperative society registered under the Cooperative Societies Act, which is not substantially financed or funded either directly or indirectly by the government, would not fall within the expression 'public authority', as defined under Section 2(h) of the RTI Act. However, in the process, by taking into consideration Sections 2(f) and 2(n) of the Act and by making a reference to the 'person' in Section 3(42) of the General Clauses Act, 1897 and in the context of Sections 8(1)(b) and 8(1)(j), had held that the Registrar of the Cooperative Societies is bound to furnish information in relation to the cooperative society notwithstanding the fact that such cooperative society is not a public authority and thus, indirectly, brought the Cooperative Society *albeit* through the Registrar under the purview of the RTI Act. With due respect, I am unable to agree with the said reasoning as it is well-settled that the purpose of a definition, though the 'information', as defined under Section 2(f) encompasses its scope which can be accessed to by a public authority under any law for

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[2] AIR 2010 Andhra Pradesh 127

the time being in force(the information that could be obtained by the authority), the emphasis being the information that could be accessed to by a public authority as defined under the Act and not by an officer (normally referred as an authorized officer / competent authority) . The distinction to be understood is 'public authority' as defined under the Act in contrast to 'public authority' as normally understood in common parlance. In that view of the matter, the institution or the temple being outside the purview of the RTI Act, the Commissioner or any authority under the Endowments Act would not be under an obligation to furnish information other than the information within their knowledge by specifically accessing thereto, invoking the provisions of the RTI Act notwithstanding the fact that the Office of the Commissioner or the Endowments Department satisfying the definition of 'public authority'. The reasoning of the learned Single Judge to cast an obligation on the Registrar of the Cooperative Society was the definition of 'information' which is inclusive of not only the information in their possession but also the information that could be accessed to by a 'public authority'. In this context, the purpose and scope of 'definition' is well settled i.e. to define a particular word, and the same by itself does not confer any right or obligation or empower an officer unless there is a corresponding provision under the Act. As a mater of fact, the judgment of the Supreme Court in ***Nalini Mahajan v. Director of Income Tax (Inv)***[3], in the context of considering the definition of 'director', had held as under:

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[3] (2002) 25 ITR 123(Delhi)

> " 82. Mr. Khanna, however, has placed reliance on a decision of the Punjab and Haryana High Court *in Vinod Goel and Ors. V. Union of India and Ors. MANU/PH/1927/2001.* With utmost respect to the learned Judges, we cannot subscribe to the views expressed therein. Mr. Khanna pointed out that Section 132 of the Act is a separate code in itself. If a broad meaning, as is sought to be contended by Mr. Khanna to the definition of 'Director' as contained in Section 2(21) of the Act is assigned, authorizing officer and assessing officer although may be different persons, would come within the purview thereof, which could never be the intention of the legislature.
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> 83. Furthermore, had the Additional Director been covered within the purview of the definition of Director General or Director, there was no necessity of defining Joint Director again, as has been done in Section 2(28D) of the Act in terms whereof also a Joint Director would be an Additional Director.
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> 84. Interpretation clause is not a positive enactment. It is also well settled that an interpretation clause, having regard to its limited operation, must be given a limited effect. While giving effect thereto, the Court must not forget that the scope and object of such a provision is subject to its applicability and it is used having relation to the context only." (emphasis supplied)

In the light of the above elaborate discussion, this Court is of the opinion that the religious institutions like temples, churches, mosques, which are not financed / funded by the government, do not fall within the purview of the 2005 Act.

Hence, all the Writ Petitions are allowed, setting aside the impugned Memo issued by the Commissioner of Endowments. No costs.

In Writ Petition No. 29396 of 2012, the petitioner in the capacity of Chairman and Managing Trustee of *Sri Venugopalaswamy Vari Temple, Nellore,* seeks to declare the action of the 2nd respondent therein in entertaining the Appeal filed by the 5th respondent under Section 19(3) of the 2005 Act as illegal and arbitrary and to set aside the notice dated 03.09.2012

which directed the petitioner to appear for hearing of Appeal on 21.09.2012 on the ground that the Memorandum issued by the 1st respondent dated 27.11.2007 was not in force. Since the impugned memorandum in all the above Writ Petitions itself is set aside, this Writ Petition is liable to be allowed and the same is accordingly, allowed.

However, now a days, since the religious institutions are receiving enormous amounts in the form of donations from various sources, it is desirable to amend the Act at least to bring in its fold all the registered temples / institutions having income over and above a particular limit, to furnish information so as to have a greater vigil with respect to utilization of the monies, conducting affairs transparently and to achieve the objects of the RTI Act.

The Miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

14th November 2018

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