

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.1022 of 2016

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.29995 of 2014 dated 07.12.2015. The 7th respondent in the writ petition viz, Executive Officer of Sri Kasi Visweswara Swami Vari Temple, Bhimavaram is in appeal against the order passed by the Learned Single Judge. The 1st respondent herein filed the writ petition seeking a mandamus to declare the order of the Deputy Commissioner of Endowments dated 24.09.2014, placing him under suspension, as illegal and arbitrary.

Facts, to the limited extent necessary, are that the 1st respondent-writ petitioner claims to be a member of the founder family of the subject temple and to have been recognised as such by the Assistant Commissioner of Endowments vide proceedings dated 23.02.2006. The subject temple is classified under Section 6(c) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short "the Act 30 of 1987").

While matters stood thus, the Assistant Commissioner of Endowments issued a charge memo on 08.11.2013 framing as many as 18 charges. The 1st respondent-writ petitioner filed a detailed explanation thereto on 22.11.2013. While the 1st respondent-writ petitioner was initially placed under suspension by the Assistant Commissioner, the order of suspension was set aside by this Court in its order in W.P.No.908 of 2012 dated 12.01.2012. Thereafter, the

Deputy Commissioner of Endowments placed the 1st respondent-writ petitioner under suspension vide proceedings dated 24.09.2014.

In his order the Deputy Commissioner of Endowments records that since the Assistant Commissioner, who enquired into the charges, had submitted a report, holding that the charges were proved, the 1st respondent-writ petitioner was being placed under suspension under Section 28 of Act 30 of 1987. Aggrieved thereby, the 1st respondent-writ petitioner invoked the jurisdiction of this Court and the Learned Single Judge, in the order under appeal, observed that, if the Deputy Commissioner of Endowments was the competent authority, the Assistant Commissioner of Endowments could not have framed charges or held an enquiry, unless he was permitted to do so by the Deputy Commissioner of Endowments; the impugned order did not show that any such permission was granted; the Deputy Commissioner of Endowments had not even indicated, in the order, whether suspension was made as a temporary measure or as a substantive punishment; since an enquiry had already been held, there was no possibility of the suspension being resorted to as a temporary measure; and if the suspension is perceived as a substantive punishment, and as more than one year had already lapsed from the date of passing of such an order, the 1st respondent-writ petitioner was entitled to restoration of his office. The impugned order was set aside and the writ petition was allowed. Aggrieved thereby, the present appeal.

Smt. K.Lalitha, learned counsel for the appellant, would submit that the competent authority to impose punishment, on a trustee of a Section 6(c) temple, is the Deputy Commissioner; and, while the Learned Single Judge had set aside the earlier order of suspension, liberty was not granted to the Deputy Commissioner of Endowments to pass an order afresh in accordance with law.

Section 28 of Act 30 of 1987 relates to suspension, removal or dismissal of a trustee. Under Sub-section (1) thereof, the authority, competent to appoint a trustee, may suspend, remove or dismiss a trustee if his acts fall within any of clauses (a) to (f) thereunder. Section 28(2) stipulates that, if it is proposed to take action under Sub-section (1), the authority competent to appoint the trustee shall frame a charge against the trustee concerned, and give him an opportunity of meeting such charge, of testing the evidence adduced against him, and of adducing evidence in his favour; and the order of suspension, removal or dismissal shall state every charge framed against the trustee, his explanation and the finding on such charge, together with the reasons therefor. Section 28(3) stipulates that, pending disposal of any charge framed against a trustee, the authority competent to appoint the trustee may suspend the trustee, and appoint a fit person to discharge the duties and perform the functions of the trustee.

Under Section 15(2) of Act 30 of 1987, the competent authority to appoint the trustee of a Section 6(c) temple (which admittedly the subject temple is) is the Deputy Commissioner of Endowments. Consequently, the power to impose the punishment of suspension, removal or dismissal, of a Section 6(c) temple trustee, is conferred only on the Deputy Commissioner of Endowments. Section 28(2), however, requires the Deputy Commissioner, if he proposes to take action to impose any of the punishments under Sub-section (1), to frame a charge against the concerned trustee, and give him an opportunity of meeting such charge. The obligation to issue a charge sheet, against an errant trustee of a Section 6(c) temple, is conferred only on the Deputy Commissioner. Consequently, the Assistant Commissioner of Endowments lacked jurisdiction to issue the charge memo. The power conferred, under Section 28(3) to place a trustee under suspension, is

to be exercised pending disposal of any charge framed against a trustee. As the charge memo issued by the Assistant Commissioner suffers from inherent lack of jurisdiction, no action could have been taken pursuant thereto by the Deputy Commissioner of Endowments; and it is only after a charge sheet is issued by the competent authority i.e the Deputy Commissioner of Endowments under Section 28(2) of Act 30 of 1987, can the trustee of a Section 6(c) temple be placed under suspension under Section 28(3) of Act 30 of 1987.

While the Learned Single Judge was justified in setting aside the order passed by the Deputy Commissioner of Endowments, on several grounds, suffice it to make it clear that the order under appeal would not disable the Deputy Commissioner of Endowments, who is the competent authority to initiate action against a trustee of a Section 6(c) temple, to issue a charge sheet under Section 28(2) of Act 30 of 1987, give the respondent-writ petitioner an opportunity of being heard, and thereafter pass an order in accordance with law.

While Sri A.Abhishek Reddy, learned counsel for the 1st respondent-writ petitioner, would submit that the 1st respondent-writ petitioner has not yet been permitted to discharge his duties as a trustee, Smt. K.Lalitha, learned counsel for the appellant, would submit that the 1st respondent-writ petitioner is continuing as a trustee.

Suffice it, therefore, to direct that, in case the 1st respondent-writ petitioner has not been permitted to resume office as a trustee of the subject temple, the Deputy Commissioner of Endowments shall forthwith issue orders, within one week from the date of receipt of a copy of this order, permitting the 1st respondent-writ petitioner to discharge his functions as a trustee. Needless to state that such an order passed by the Deputy Commissioner of Endowments shall be

without prejudice to his right to exercise his powers, under Section 28(2) and (3) of Act 30 of 1987, in accordance with law.

The order under appeal is modified to the extent indicated hereinabove and the Writ appeal is disposed of accordingly. 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)

11th April, 2018
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Date: 11.04.2018