

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

WRIT PETITION Nos.25529 of 2005 & 14706 of 2008

A.V.Samba Siva Rao.

... Petitioner

and

**The Commissioner, Endowments Department,
Guntur and others.**

...Respondents

**Date of Judgment Pronounced: 27-08-2018
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 Their Ladyship/Lordship wish to
see the fair copy of the Judgment ? Yes/No

CHALLA KODANDA RAM,J

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

+ WRIT PETITION Nos.25529 of 2005 & 14706 of 2008

% Dated 27.08.2018

Between:

A.V.Samba Siva Rao.

... Petitioner

and

**The Commissioner, Endowments Department,
Guntur and others.**

...Respondents

! Counsel for the petitioner : Sri Srinivasa Murthy

^ Counsel for respondent Nos. 1 and 2 : G.P. for Endowments

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? Cases cited:



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.25529 of 2005 & 14706 of 2008

COMMON ORDER:

These writ petitions are being disposed of by this common order as the subject matter is one and the same.

W.P.No.25529 of 2005 is filed for the following relief:

“To issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the proceedings Rc.No.E3/16099/2005, dated 15.10.2005, as arbitrary, illegal, violative of principles of natural justice and consequently direct the respondents to implement proceedings Rc.No.E3/16099/2005, dated 06.08.2005.”

W.P.No.14706 of 2008 is filed for the following relief:

“to issue a writ order or direction more particularly one in the nature of writ of mandamus declaring impugned proceedings in O.A. No 9 of 2005 before the Deputy Commissioner of Endowments Guntur as arbitrary, illegal, capricious, high handed, violate Articles 14, 25, 26 of the Constitution of India, the statutory provisions of Section 29 of the AP Charitable & Hindu Religious Institutions and Endowments Act, 1978 (Act 30 of 1987) as amended by Act 33 of 2007, hereinafter referred to as the Act, apart from being in violation of principles of natural justice and fair play and consequentially quash the C.C.No. 60 of 2008, Additional Judicial First Class Magistrate, Ponnur, Guntur District and also direct the respondents herein not to interfere with the activities of the petitioner herein in the subject matter institution in any manner whatsoever...”

Petitioner states that he belongs to Vysya Community; his paternal grandfather, by name, Sri Avvaru Burraiah, who is the

person of high moral values, to benefit the poor and needy, established a Dharma Sathram, by name, Avvaru Burraiah Dharma Sathram (for short the 'Sathram') in his own land situated at Ponnur; that during his life time, he managed the said Sathram, which was registered under Section 38 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act (for short 'the Act') by respondent No.2-Assistant Commissioner, Endowments Department, Guntur *vide* proceedings, dated 01.06.1973 and thereafter, his sons and other legal heirs managed the same; on the petitioner's application, respondent No.2 issued proceedings, dated 17.05.1997, recognizing him as a Member of founder family of the Sathram; that on an earlier occasion, when the Endowments Department sought to interfere with the affairs of the Sathram by appointing one Sri Siva Brahman as its Executive Officer, the petitioner filed W.P.No.5327 of 1974, which in turn, was allowed by this Court *vide* order, dated 01.07.1976 quashing the appointment of the said Executive Officer; that on 07.12.1996, again, an Executive Officer was appointed and on 31.08.2001, a Manager was appointed to the Sathram; that aggrieved by the same, he submitted a representation on 18.03.2005 to respondent No.1 stating that the income of the Sathram for the years 2002-03, 2003-04 and 2004-05 is below Rs.50,000/-, as prescribed under Section 6 of the Act; that on considering the said representation,

respondent No.1 *vide* proceedings, dated 06.08.2005, had withdrawn the appointment of the Manager, entrusted the management of the Sathram to the founder trustee i.e., the petitioner herein, and directed the Deputy Commissioner of Endowments to see that the proceedings are implemented; that since the Manager has not handed over the charge of the Sathram to the petitioner, respondent No.2 *vide* proceedings, dated 10.09.2005, requested the Inspector, Endowments Department to see that the order passed by respondent No.1 is implemented, but, in utter surprise, respondent No.1 issued proceedings, dated 15.10.2005, withdrawing his earlier proceedings, dated 06.08.2005, with respect to withdrawing the appointment of the Manager and entrusting the management of the Sathram to the petitioner as founder trustee. Aggrieved by the said proceedings, the petitioner filed W.P.No.25529 of 2005.

Respondent No.2 filed a counter-affidavit asserting that the petitioner proposes to construct an Arya Vysya Aparasala without obtaining permission from the authorities concerned and he was not in the management of the Sathram; that there were several irregularities committed by the petitioner in the process of managing the affairs of the Sathram and it necessitated the appointment of a Manager by the Department to manage the affairs of the Sathram with due care; that the petitioner submitted a representation to respondent No.1 with misleading facts and

got issued the proceedings, dated 06.08.2005, withdrawing the appointment of the Manager; that the answering respondent visited the Sathram and found that the petitioner committed several irregularities, and thereby, submitted a report to respondent No.1; that after considering the said report, respondent No.1 issued the impugned proceedings withdrawing the earlier proceedings, dated 06.08.2005, and directing respondent No.3 to continue as a Manager of the Sathram and that respondent No.1 is the competent authority to take any decision with regard to the administration and management of the Sathram and therefore, prays for dismissal of the writ petition.

Sri Srinivasa Murthy, learned counsel for the petitioner, submits that since the annual income of the Sathram is less than Rs.50,000/-, the appointment of Executive Officer/Manager is impermissible, as evident from the language employed in Section 6 read with Section 29 of the Act. He further submits that within two months from the date of issuance of the proceedings, dated 06.08.2005, respondent No.1 without there being any material and without any basis, had changed the track and issued the impugned proceedings. He also submits that before issuing the impugned proceedings, the minimum that is required to be done by respondent No.1 is to put the petitioner on notice that in what circumstances, it had become necessary to withdraw the proceedings, dated 06.08.2005, and non-issuance of such notice

to the petitioner is in utter violation of the principles of natural justice as it affects his rights to function as a founder trustee of the Sathram and therefore, prays for setting aside the impugned proceedings.

Learned Government Pleader for Endowments appearing for respondent Nos.1 and 2 reiterates the averments mentioned in the counter-affidavit.

Having heard the learned counsel for the parties, it may be noted that an Executive Officer/Manager can be appointed to an institution having minimum income of Rs.50,000/- and above. In the present case on hand, it is not in dispute that the Manager came to be appointed initially in 1996 and continued till 31.08.2001, as evident from the representation submitted by the petitioner in 2005 to respondent No.1 seeking to remove the Manager. This presupposes that as on 31.08.2001, the institution was having the income of Rs.50,000/- and above. Whether the Executive Officer/Manager is to be continued or not is a matter which is required to be considered by the competent authority. It may also be noted that respondent No.1 issued the impugned proceedings after taking into consideration the report, dated 27.08.2005, submitted by respondent No.2, a perusal of which discloses that respondent No.2 found that the petitioner committed various omissions and commissions in managing the

affairs of the Sathram, and thereby, he got a doubt, whether the petitioner is a founder trustee or not. Therefore, it is evident that various commissions and omissions of the petitioner with respect to his mismanagement of the Sathram were brought to the notice of respondent No.1.

The questions which fall for consideration in the present case are, (1) whether respondent No.1 is empowered to review his earlier decision? (2) whether the impugned proceedings are unauthorized and illegal? and (3) whether the petitioner is required to put on notice by respondent No.1 before issuing the impugned proceedings.

It may be noted that there is no requirement to appoint a Manager/Executive Officer for the institutions, the income of which is less than Rs.50,000/-, as stated supra. It is not in dispute that the Executive Officer/Manager came to be continued till 31.08.2001. In the circumstances, the specific contention of the petitioner does not require to be considered any further, as he himself sought withdrawal of the appointment of the Manager and it is only at his request, the proceedings, dated 06.08.2005, came to be issued. Since the order, dated 31.08.2001, not being challenged, the only question that requires to be considered now is the validity or otherwise of the order, dated 15.10.2005, keeping the order, dated 06.08.2005 in abeyance. This aspect of

the matter can be considered from the angle of statutory right and power vested in respondent No.1 in terms of Section 8 of the Act, which reads as under:

Section 8: Powers and functions of Commissioner and Additional Commissioner:

- (1) Subject to the other provisions of this Act, the administration of all Charitable and Hindu Religious institutions and endowments shall be under the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found or exist.
- (2) Without prejudice to the generality of the foregoing provisions, the Commissioner shall exercise the powers conferred on him and perform the functions entrusted to him by or under this Act in respect of such institutions or endowments in the State as are included in the lists published under Clause (a), Clause (d) and Clause (e) of Section 6.
- (3) The powers and functions of the Additional Commissioner shall be such as may be determined by the Government from time to time.
- (4) The Commissioner may delegate to a Deputy Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act including the powers and functions of an Assistant Commissioner which may be exercised or performed by the Commissioner under sub-section (5) but not including the power and functions of the Commissioner under sub-section (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institution or endowments or any class or

group of institutions or endowments in the State subject to such restriction and control as the Government may by general or special order lay down and subject also to such limitations and conditions, if any, as may be specified in the order of delegation.

(5) The Commissioner may delegate to an Assistant Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act except the powers and functions of the Commissioner under sub-section (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institution or endowment in the sub-division in charge of the Assistant Commissioner subject to such restrictions and control as the Government may, by general or special order, lay down and subject also to such limitations and conditions if any, as may be specified in the order of delegation.

(6) Notwithstanding anything in Sections 10 and 11, the Commissioner may, by order in writing, declare that the exercise and performance of all or any of the powers or functions by the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall be subject to such exceptions, limitations and conditions as may be specified in the order and he may himself exercise any power or perform the functions so excepted.

From the above, it is clear that the Commissioner shall ensure that the institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found or exist. In the case on hand, since the petitioner/respondent No.1 was informed that the affairs of the Sathram were not being conducted in the manner in which they are required to be conducted, he is duty bound to take action which would protect the institution. The powers under Section 8

of the Act are not in any way restricted by the requirement of appointing an Executive Officer in terms of Section 29 of the Act. Further, under Section 29 of the Act, the duties of the Executive Officer were clearly setout in extenso. In other words, the functions which are required to be discharged by an Executive Officer are setout from sub-section (3) of Section 29 onwards. In other words, appointment or continuation of the Manager was necessitated in the opinion of respondent No.1 on account of the material, which was brought to his notice by respondent No.2 *vide* report, dated 27.08.2005. Viewed from any angle, the decision of respondent No.1 to continue the Manager cannot be found fault with. Even if it is assumed that the petitioner is a founder trustee of the Sathram, with respect to the appointment or otherwise of the Executive Officer, there is no requirement to issue notice to the petitioner, as he has no role in it, as such, there is no question of violation of principles of natural justice by respondent No.1 before issuing the impugned proceedings. A careful perusal of the proceedings, dated 17.05.1997, would disclose that the petitioner was recognized only as a member of founder family of the Sathram. In view of the same, the petitioner has a preferential right to be appointed as a trustee of the Sathram, but, he is not a trustee of the Sathram in terms of Section 15 of the Act, which reads as under:

Section 15: Appointment of Board of Trustees:- (1) In respect of a charitable or religious institution or endowment included in the list published under Clause (a) of Section 6-

- (a) whose annual income exceeds rupees ten lakhs, the Government shall constitute a Board of Trustees consisting of (nine) persons appointed by him;
- (b) whose annual income does not exceed rupees ten lakhs, the Commissioner shall constitute a Board of Trustees consisting of five persons appointed by him.

(2) In respect of a charitable or religious institution or endowment included in the list published under Clause (b) of Section 6, the Deputy Commissioner having jurisdiction shall constitute a Board of Trustees consisting of five persons appointed by him.

(3) In the case of any charitable or religious institution or endowment included in the list published under Clause (c) of Section 6, the Assistant Commissioner having jurisdiction shall constitute a Board of Trustees consisting of three persons appointed by him:

Provided that the Assistant 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."

Even viewed from that angle also, the petitioner has no *locus standi* to question the impugned proceedings.

In those circumstances, there is no merit in W.P.No.25529 of 2005, which is accordingly dismissed. Consequently, W.P.No.14706 of 2008 is also dismissed. It is made clear that the observations made in this order with respect to various proceedings are only for the purpose of disposal of the writ petitions and the same shall not be construed as expressing any opinion with respect to the conduct or otherwise of the petitioner,

as mentioned in the proceedings of respondent No.1 or the report of respondent No.2 submitted to respondent No.1.

Miscellaneous Petitions, if any pending shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt: 27.08.2018

Note: L.R. copy to be marked
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