HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

W.P. No. 20653 of 2018

Date: 30.08.2019

Between:

Vardha Gnaneshwar Goud and others

... Petitioners

and

The Assistant Commissioner of Endowments,
Hyderabad District, at Boggulkunta,
Tilak Road, Abids, Hyderabad, and others.

...Respondents

Counsel for the petitioners: Mr. M. Vidya Sagar

Counsel for the respondent Nos.1 to 3: GP for Endowments

Counsel for the respondent Nos.4 to 19: Sudarshan Reddy. D

The Court made the following:

<u>ORDER</u>: ***(per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)***

The petitioners have challenged the legality of the order dated 16.04.2018, passed by the Assistant Commissioner, Endowments Department, the respondent No.1, whereby the learned Assistant Commissioner has registered Sri Surabhandeshwara Goundla Matam situated at Rahimpura, Puranapool, Hyderabad, and included the names of the respondent Nos.4 to 19 in Column No.4 of Section 43 (10) Register, by invoking his power under Section 43 (10) of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 ('the Act' for short).

Briefly the facts of the case are that Sri Surabhandeshwara Goundla Matam is an institution that was built by the members of Gowda community. On 08.03.1876, it was registered under the Hyderabad Endowments Regulation. Therefore, the institution was under the jurisdiction of the Endowments Department. With the coming into force of the Act, and upon a proposal submitted by the then Chairman of the committee of the founder's family members, on 28.11.2009, the institution was registered under the provisions of the Act. Originally, there were eight trustees; they were managing the institution. Subsequently, with the demise of two trustees, the Assistant Commissioner prepared a fresh list of trustees *vide* proceedings dated 06.12.2013 under Section 43(10) of the Act. By the said proceedings, twenty five trustees were included in the self-styled committee. Therefore, for all practical purposes, the institution was functioning under the self-styled committee from 2013.

Subsequently, Mr. L. Srinivasa Gowd, the respondent No. 5, styling himself as the Chairman of Sri Surabhandeshwara Goundla Matam, submitted a proposal for registration under Section 43(1) of the Act. According to the petitioners, without giving any opportunity of hearing to them, by the impugned order dated 16.04.2018, the Assistant Commissioner of Endowments, while invoking the power under Section 43(10) of the Act, deleted the petitioners' names, and registered the said institution with a new committee. Hence, the present writ petition before this Court.

The learned counsel for the petitioners submits that according to Section 43(10) of the Act, before any alterations, omissions or additions are made by the Assistant Commissioner with regard to the particulars relating to any institution, the Assistant Commissioner is required to make enquiries and give an opportunity of hearing to the trustees or other persons. However, in the present case, the procedure prescribed by law has not been followed.

Secondly, when the proposal was sent to the Assistant Commissioner, the petitioner No.1 not only submitted his objections but also issued legal notice on 29.04.2017 through an Advocate. But, notwithstanding the objections raised by the petitioner No.1, no opportunity was given to him. Instead, the impugned order was passed merely after hearing the applicant, the respondent No.5. Therefore, the impugned order is clearly in violation of Section 43(10) of the Act.

On the other hand, the learned counsel for the respondent Nos.4 to 19 submits that in fact, a notice was issued to the institution. The notice was displayed on 18.04.2017. Thus, an opportunity of hearing was given to the petitioners. Therefore, the Assistant Commissioner is well justified in passing the impugned order dated 16.04.2018.

In rejoinder, the learned counsel for the petitioners submits that even the impugned order dated 16.04.2018 clearly states that '*after hearing the applicant*', but it does not reveal that the petitioners, who were the objectors, were duly heard.

Heard the learned counsel for the parties, and perused the impugned order.

Section 43 of the Act deals with registration of Charitable and Religious Institutions and Endowments and prescribes an elaborate procedure for the said registration, which is as under:

Section 43(10) of the Act is as under:

> *"The trustee or other person incharge of the management of an institution or endowment or his authorized agent shall report to the Assistant Commissioner every year the alternations, omissions or additions in the particulars, relating to the institution or endowment and shall also send to him once in three years the certificate of registration granted to him under sub-section (5) or sub-section (9) together with a statement of such alternations, omissions or additions, as may be necessary to the said certificate and the Assistant Commissioner shall thereupon make such enquiry as he deems fit and amend the certificate*

wherever necessary and return it to such trustee or other person and shall also make necessary amendments in this regard in the register maintained by him under sub-section (6). A copy of such amendments shall be furnished to the Deputy Commissioner having jurisdiction and another copy to the Commissioner."

A bare perusal of Section 43(10) of the Act clearly reveals that the trustee or other person incharge of the management of the institution is duty bound to report to the Assistant Commissioner every year with regard to any alterations, omissions or additions in the particulars relating to the institution. Moreover, the trustee is required, once in three years, to send a copy of the certificate of registration granted to him under sub-section (5) or under sub-section (9) together with the statement of such alterations, omissions or additions, as may be necessary, to the said certificate. After receiving the same, the Assistant Commissioner is required to carry out an enquiry, and to amend the certificate wherever necessary, and in case any alternation is made, then the necessary amendments need to be made in the register maintained by him under sub-section (6).

Thus, obviously, an enquiry needs to be conducted by the Assistant Commissioner before carrying out any alterations, omissions or additions.

A bare perusal of the impugned order dated 16.04.2018 clearly reveals that the Assistant Commissioner has clearly noticed that the petitioner No.1 had filed a representation stating that he is functioning as the President/Chairman of the subject institution, and had requested the Assistant

Commissioner to drop the proceedings under Section 43(10) of the Act, and not to carry out alterations under Section 43(10) of the Act as requested by the respondent No.5. But, despite having noticed the objections raised by the petitioner No.1, the Assistant Commissioner did not deal with the same. Instead relying upon the application of respondent No.5, and after giving an opportunity of hearing only to the applicant, the impugned order was passed by the Assistant Commissioner. Thus, clearly, the Assistant Commissioner has failed to adhere to the procedure established by Section 43(10) of the Act. Hence, the impugned order dated 16.04.2018 is clearly legally unsustainable.

For the reasons stated above, this Writ Petition is hereby allowed. The impugned order dated 16.04.2018 is set aside. The case is remanded to the Assistant Commissioner with a direction to hear all the concerned parties, after giving an ample opportunity of hearing to them, and to pass the necessary order under Section 43(10) of the Act only thereafter. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

Date: 30.08.2019

(A. ABHISHEK REDDY, J)

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