

(1998) 01 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1448 of 1997

A.B. Srinivasan

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 27(2), 39(1), 8

Citation : (1998) 2 ALD 640 : (1998) 3 ALT 156 : (1998) 1 APLJ 378

Hon'ble Judges : P. Venkatarama Reddy, Acting C.J.; A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. K.V. Satyanarayana, for the Appellant; Government Pleader for Endowments and Mr. Metta Chandrasekhara Rao, for the Respondent

Judgement

P. Venkatarama Reddy, Acj

1. The appellant herein filed W.P.No. 12775 of 1997 questioning the order dated 10-6-1997 passed by the third respondent consequent to the order of the second respondent dated 7-6-1997 directing transfer of the petitioner from Sri Swamy Hathiramji Mutt, Tirupathi to Sri Veeranjaneya Swamy Temple, Gandhi, Cuddapah district. The petitioner was working as Senior Assistant in Sri Swamy Hathiramji Mutt, which is an institution governed by the provisions of A. P. Charitable and Hindu Religions Institutions & Endowments Act. The said institution is being administered by the custodian of the rank of Deputy Commissioner of Endowments. As regards the circumstances warranting the transfer of petitioner, it cannot be gain said that there is adequate and ample material as disclosed from the averments in the counter-affidavit. The only point urged before us by the learned Counsel for the appellant is that the Commissioner of Endowments (Respondent No.2) has no jurisdiction to direct transfer of the employees from one religious institution to another religious institution, notwithstanding Section 39 of the Act. The learned single Judge, following the latest decision of Division Bench in P.S.R. Subrahmanyam. v Commissioner, Endowments 1997 (6) ALD 57

rejected the above contention.

2. Section 39 of the A. P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 lays down as follows:

"Section 39: Transfer of office holders and servants :--(1) The Commissioner shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf"

The learned Counsel for the appellant contends that in the absence of Rules, the power of transfer cannot be exercised by the Commissioner. In this regard, reliance is placed on the decision of the Division Bench of this Court in the Commissioner of Endowments Dept A.P. v. G. Venkateswarlu 1976 ALT 109 (SN). The short note version of the said decision reads as follows:

"Institutions with small incomes should not be touched either by grouping or by appointing Executive Officers unless the Government makes rules in this behalf It makes the intention of the Legislature plain that the Commissioner whenever he wants any grouping of certain institutions and endowment can do so only "in accordance with" the Rules if any, made by the Government. In other words if there are no rules, the Commissioner shall not exercise the power.'"

It is seen that the said decision was rendered in the context of a different provision relating to grouping of institutions u/s 27(2) of the old Act. The power of transfer expressly vested with the Commissioner was not the subject-matter of decision in that case. That apart, the decision of the Supreme Court in Surinder Singh Vs. Central Government and Others, puts the matter beyond doubt. The Supreme Court took the view that the non-framing of the rules is not always an obstacle for exercising the substantive power vested on the repository by the Act itself. The Supreme Court observed:

"Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of Rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the Rules"" only means, in accordance with the rules, if any. If rules are framed, the powers so confirmed on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute."

Recently, a Division Bench of this Court consisting of N.Y.Hanumanthappa and V. Bhaskar Rao, JJ negatived a similar contention while upholding the power of the Commissioner to transfer the employee from one institution to another. The learned Judges after referring to the afore mentioned decision of the Supreme

Court and also an earlier Division Bench decision in W.A.No.37 of 1970 dated 26-7-1971, observed as follows:

"Section 39 of the new Act is quite clear as to the powers of Commissioner for transfers. The assertion of the learned Counsel for the petitioners that unless rules are framed under the present new Act, as framed under the old Act, in the matter of transfer, the Commissioner does not get jurisdiction and the present transfers as such are without jurisdiction in the absence of rules as contemplated u/s 39 of the Act, has no force. When it is not in dispute that an authority who appoints will have the power to transfer, mere absence of Rules will not render the power of transfer of such officer illegal. A close reading of Section 39(1) makes it clear that the transfers may be made. The word used in respect of framing of Rules is "may" but not "shall". After all, making the Rules is only to avoid confusion or ambiguity in carrying out the purport of the Act more effectively. In other words, it is a procedural or internal regulation as to how the authorities have to discharge the powers and by whom the power has to be exercised. When the transfer is within the ambit of the power of appointment, absence of rules dealing with the transfers will not make such transfers illegal. Further the transfers are given effect within the Unit. It is not shown how the service conditions of any of the petitioners are affected. After all when an employee/person accepts a job, he has also to accept the liability of transfer, if such post is transferable one. Transfer is an incidence of service."

We are in agreement with the above view expressed by the learned Judges. We may add that the absence of Rules governing transfers does not place the exercise of power in jeopardy nor does it create a vacuum in exercising effective control over the staff for the purpose of ensuring the proper administration of the religious and charitable institutions. It is also pertinent to refer to Section 8 of the Act, which reads as follows:

"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 founded or exist.""

4. The power to transfer may be implicit in this very provision. In order to obviate any doubt, a specific power has been conferred u/s 39. That power can be effectively exercised even if there are no Rules on the subject. We have therefore no hesitation in rejecting the contention of the learned Counsel for appellant.

5. The learned Counsel submits that there is a conflict between the decision in the Commissioner of Endowments Dept v. G.Venkateshwarlu, (supra) and P.S.R.

Subrahmanyam's case (supra) and therefore, the matter has to go before a Full Bench. We have already adverted to the fact that the decision in G.Venkateshwarlu case (supra) turned on the interpretation of a qualitatively different provision. That apart, it is doubtful whether the ratio of the said decision holds good in the light of more recent decisions of the Supreme Court especially the one cited earlier i.e., Surinder Singh's case (supra). We would prefer to follow the latter judgment for the reasons given above instead of referring the matter to Full Bench.

6. The learned Counsel next relied on the decision in General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, . That was a case in which the rule providing for transfer was held to be ultra vires the provisions of the Act. That is not the situation here.

7. The Writ Appeal is therefore dismissed at the admission stage.