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**(1999) 04 AP CK 0033**

**In the Andhra Pradesh High Court**

**Case No : WA No's. 461 of 1999 and Batch**

Executive Officer, Group Temples, Guntur

APPELLANT

Vs

Dasaratha Rama Rao and others

RESPONDENT

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**Date of Decision : 28-04-1999**

**Acts Referred:**

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987  
— Section 15, 16, 17, 18, 19  
Constitution of India, 1950 — Article 25(1), 25(2)

**Citation :** (1999) 4 ALD 164 : (1999) 3 ALT 466 : (1999) 2 APLJ 33

**Hon'ble Judges :** M.S. Liberhan, C.J;A.S. Bhate, J

**Bench :** Division Bench

**Advocate :** Mr. Metta Chandra Sehara Rao, for the Appellant; Mr. T. Veerabhadraiah, for the Respondent

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## **Judgement**

A.S. Bhate, J

1. Facts in Writ Appeal No.461 of 1999 are stated for purpose of understanding the dispute that arises. This appeal arises out of decision rendered in WP No.14680 of 1996. The said writ petition was as follows :

The founder Sri Ram Mohana Rao had purchased certain vacant land and created charitable endowment in the name of "Sri Tadavarthy Rama Mohan Rao Choultry". The writ petitioner is a hereditary trustee of the said Trust. The Trust was originally created long back. The Endowment Department passed order on 4-7-1996 appointing an Executive Officer to manage the Trust in question under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereafter referred to as the "Act"). The petitioner challenged the appointment of the said Executive Officer. The order passed by the Endowment Department directed the petitioner to handover complete charge of the records, accounts, movable and immovable property to the Executive Officer.

2. In all other cases petitioners are the hereditary trustees of Trust or

Endowment founded long back and orders have been passed appointing Executive Officer under the provisions of the Act. The said orders are challenged.

3. The department took a stand that there was power to appoint an Executive Officer under the provisions of the Act. Hence the orders challenged do not suffer from any illegality or irregularity.

4. The learned Counsel for the petitioners have contended that an Executive Officer can be appointed u/s 29 of the Act by the Government under certain circumstances. The relevant portion of Section 29 of the Act is as follows :

"(1) The Government may constitute not more than three charitable or religious institutions or endowments each of whose annual income is rupees one lakh into such groups as may be prescribed.

(2) For each such group of charitable or religious institutions or endowments there shall be appointed an Executive Officer for exercising the powers and discharging the duties conferred on him by or order under this Act.

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5. It is argued that the Government can constitute a group of not more than three charitable institutions or endowments whose annual income is Rs.50,000/- (Rupees fifty thousands only) but not exceeding Rs.one lakh annually and for each such group Executive Officer can be appointed by the Government. However, such appointment can be made only when there are allegations of mismanagement of the said Trust or Endowment by the existing trustees. Such mismanagement has to be shown by making an appropriate enquiry after giving opportunity to the Trustee-in-charge to show cause against the proposed action. The learned Counsel have relied on certain decisions for such argument. On the other hand, the learned Counsel for the respondent-authorities submits that apart from power u/s 29, Section 8 of the Act enables the Commissioner, Additional Commissioner or Assistant Commissioner as the case may be to have general superintendence and control over the administration of Charitable Hindu Religious and Endowments. By exercising powers u/s 8 of the Act it is permissible for the Commissioner to appoint an Executive Officer for the management of a particular endowment/ trust. The power to appoint an Executive Officer is not traceable only to Section 29 of the Act.

6. It has already been pointed out that in all the cases the petitioners are hereditary trustees. They are not founder-trustees themselves nor they have been appointed or elected as trustees. Section 16 of the Act has abolished the office of hereditary trustee or muthawalli or by whatever name it is called. Section 16 begins with a non-absolute clause and says:

"Notwithstanding any compromise or agreement entered into or scheme framed, or judgment, decree, or order passed by any Court, Tribunal or other authority or

in a deed or other document prior to the commencement of this Act and in force on such commencement, the rights of a person for the office of the hereditary trustee or mutawalli or dharmakarta or muntazim or by whatever name it is called shall stand abolished on such commencement."

The Act came into force from 15th May, 1987. Thus from the said date the Office of Hereditary trustee stood abolished. The petitioners in all the cases being hereditary trustees have therefore, no right to manage the trust in question after abolition of Office of Hereditary trustee. In fact even before abolition of the rights of hereditary-trustee, the only right the hereditary trustee could have was a bare right to manage and administer. The hereditary trustees never had any proprietary or beneficial interest either in the corpus or usufructs of the Trust. This was so held in Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others, . The only right of petitioners was to manage the Trust so long as the Office of the Hereditary Trust existed. Once that office was abolished, it was a necessary consequence that somebody else has to be appointed for management of the Trust by the authorities. The Act nowhere refers any rights of the Hereditary Trustees of the management of the Trust to continue till Board of Trustee is appointed for a particular Endowment u/s 15 of the Act. In such circumstances, Section 8 of the Act has to come into play. The Commissioner would not only be justified but is enjoined to exercise his supervisory powers to administer the concerned management by appointing an appropriate person- incharge to look after the management.

7. We are therefore of the view that appointment of Executive Officer for the management of the Trust in question is perfectly justified and legal if exercised by any of the authorities mentioned u/s 8 of the Act.

8. The learned Counsel for the petitioners referred to following cases which will be discussed presently.

The first case referred to is Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras Vs. K. Jothiramalingam and Another, . That was a case arising out of the provisions under the Tamil Nadu Hindu Religious and Charitable Endowments Act of 1959. The Hereditary Trustee of the Temple made a grievance that Executive Officer was appointed u/s 45 by the Commissioner under the provisions of that Act without any notice to the Hereditary Trustee to show-cause against the appointment. The said petition was allowed and it was held that failure to give such notice rendered action of appointment of Executive Officer invalid. This case has no relevance in the facts and circumstances of petitions before us. The Office of Hereditary Trustee was not abolished at that relevant time in Tamil Nadu. The Hereditary Trustee was therefore having a right to manage the Trust in normal circumstances. It was in such circumstances that the Court found it necessary that petitioner should have been given notice and opportunity to show-cause against the proposed action. The learned Counsel then referred to the decision in Executive Officer, T.G.

Temples v. Gopal Inani, 1996 (1) ALD 1187. That was a case where appointment was made u/s 27(2)(b) of the repealed A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 (hereafter referred to as the "Repealed 1966 Act"). The said action was u/s 27 of the Repealed 1966 Act. At that point of time the Office of Hereditary Trustee was not abolished and the right of Hereditary Trustee could not be taken away u/s 27 of the Repealed 1966 Act without the Hereditary Trustee being given a notice and opportunity to show-cause. The action u/s 27 of the Repealed 1966 Act was apparently taken on ground of mismanagement. Obviously the petitioner in that case was entitled to notice if imputation of mismanagement was made against him. Then a reference was made to the decision in U.P. Shiksha and Education Board Vs. Rajender Prasad Gupta, , for arguing that any appointment of an ad hoc nature cannot be terminated without giving opportunity to a person holding the ad hoc appointment. We fail to understand as to how this has any relevancy to the facts of the present case. The said matter was regarding termination of services of the petitioner therein.

9. Lastly, strong reliance has been placed on certain observations made in Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another, . The various provisions of the Act of 1987 were under challenge before the Apex Court and in particular Sections 15, 16, 17 and 29 of the Act were challenged as ultra vires of the Constitution of India. The Apex Court held all the provisions of the Act to be intra vires. The provision of abolition of Hereditary Rights of the Trustee was also upheld. The observations as follows have been made in that case Pannalal Bansilal Patil v. State of A.P., (supra).

"..... abolition of the hereditary right in trusteeship is unexceptionable, it being a part of due administration, which is a secular activity. Being a permissible law under Article 25(2), it is not violative of Article 25(1) of the Constitution. It cannot be further held either Section 15 or Section 16 of the Act is ultra vires of the Constitution."

The learned Counsel for the petitioner relies on certain observations made at another place as follows :

"Though the abolition of Hereditary right in Trusteeship u/s 16 has already been upheld, the charitable and religious institution or endowment owes its existence to the founder or members of the family who would resultantly evince greater and keener responsibility and interest in its proper and efficient management and governance. The autonomy in this behalf is an assurance to achieve due fulfilment of the objective with which it was founded unless, in due course, foul in its management is proved, therefore, so long as it is properly and efficiently managed, he is entitled to due freedom of management in terms of the deed of endowment or established practice or usage. In case a board of trustees is constituted, the right to preside over the board given to the founder or any member of his family would generate feeling to actively participate not only as a true representative of the source, but the same also generate greater influence

in proper and efficient management of the charitable or religious institution or endowment."

These observations in our view do not vest the petitioner with any right to continue with the management of the Trust even though the office of Hereditary Trustee has been abolished under the provisions of the Act. What the judgment says is that when u/s 15 of the Act a Board of Trustees is constituted in respect of a particular institution or endowment, the founder trustee or the Hereditary Trustee as the case may be should be one of the said members of the Board and should be an Honorary Chair person of the said Board. The Act however, by Section 17, prescribes the procedure for making appointment of Board of Trustees and Section 18 provides for qualification of trusteeship while Section 19 sets out the disqualifications for the trusteeship. The Hereditary Trustees has no right in our opinion, except of being appointed as trustees in the Board of Trustees when constituted, subject to they being qualified under the provisions of the Act. Presently we are not concerned about this aspect.

10. An argument was advanced that no Board of Trustees has been appointed after abolition of the office of the Hereditary Trustee. That is totally different issue and it will be open for the petitioners to agitate before the appropriate authorities to appoint Board of Trustees and to appoint the Hereditary Trustee as one of the members in terms of Pannalal's case (supra) and the provisions of the Act.

11. In our view the argument advanced before us that unless there is mismanagement by Hereditary Trustee, the Commissioner, Deputy Commissioner or Assistant Commissioner as the case may be, has no power to appoint an Executive Officer is totally meritless. Section 29 of the Act operates in totally different situation and if action is justified only u/s 29 of the Act that a show-cause notice to the person-in-charge will be necessary. Such notice, of course, will be necessary to person-in-charge holding charge lawfully and validly. The petitioners are claiming their right to manage only on the ground that they are Hereditary Trustees. For reasons given above, we hold that the Hereditary Trusteeship having been abolished, they cannot claim any right to manage the property and the authorities are duly bound to take action u/s 8 of the Act by appointing an Executive Officer for the lawful management of the particular Trust. In this view of the matter, the writ petition deserve to be dismissed.

WA No.461 of 1999:

12. This writ appeal arises against an order passed by the learned single Judge in WP No. 14680 of 1996. The learned single Judge held that in view of the Supreme Court judgment in Pavani Sridhara Rao v. Government of Andhra Pradesh JT 1996 (3) SC 430, the removal of trustee without there being any evidence of mismanagement was unsustainable. However, it escaped from the notice of the learned single Judge that petitioner was claiming to be an Hereditary Trustee which Office was abolished under the provisions of the Act.

Appointment of Executive Officer by the Commissioner of Endowment was challenged. Reference to Section 29 was inappropriate. The order was admittedly issued by the Commissioner. Section 29 of the Act comes into play only when the Executive Officer is appointed by the Government. The appointment in the instant case was by the Commissioner and was obviously u/s 8 of the Act. This Court has held in *G.R. Murthy v. Government of Andhra Pradesh* 1997 (5) ALD 285, that appointment of Executive Officer u/s 8 of the Act is valid. This view was confirmed by us while dealing with WA No.140 of 1999 disposed of on 10-2-1999. In the circumstances, we are of the view that the judgment under appeal is unsustainable. The petitioner was claiming as a Hereditary Trustee which office was abolished and appointment of Executive Officer u/s 8 of the Act by the Commissioner was justified. The appeal will have to be allowed.

WP No. 10277 of 1991 :

13. Though the facts of this case are similar to the others the contention of the writ petitioner is that earlier when an Executive Officer was appointed under the provisions of the Repealed 1966 Act, the appointment was challenged in writ petition before this Court. The said appointment of Executive Officer was quashed on the ground that no notice was given to the petitioner and no enquiry was made before appointment of Executive Officer. It is contended that inspite of such order having been passed in the earlier writ petition, the respondents have again passed order in 1991 that petitioner should handover the charge to the Executive Officer, who has been appointed. It is contended that in view of the judgment in the previous writ petition, it was incumbent for the respondent-authorities to issue show-cause notice and hold enquiry before appointing Executive Officer. We find no merit in this contention because the judgment of the earlier case was in relation to the provisions of the Repealed 1966 Act. As pointed out already, the present Act came into force in 1987 abolishing the rights of the hereditary trustee, u/s 8 of the new Act, it is competent for the authorities to appoint an Executive Officer. The earlier judgment will not come in way for exercising the powers under the new Act. Hence the contention is meritless and the writ petition deserves to be dismissed.

WP No. 6025 of 1992:

14. It was argued that the action has been taken at instance of a local MLA and therefore, it suffers from mala fides. The said MLA is not made a party to this writ petition. No specific mala fides have been alleged in the writ petition. Mala fides cannot be attributed against a person not a party and when no particulars have been given to spell out the mala fides. Hence this writ petition also deserves to be dismissed.

WA No. 1940 of 1998:

15. By this writ appeal the appellant has challenged the order of the learned single Judge rejecting the petition for review which was made by the appellant before the learned single Judge for reviewing the orders in WP No.] 1037 of 1997

disposed of on 24-6-1998. The review petition was rejected on 4-8-1998. In the writ petition filed by the appellant, the learned Judge dismissed the writ petition holding that the appointment of an Executive Officer was not invalid. No appeal lies against rejection of a review petition. Hence the writ appeal deserves to be dismissed. No appeal is filed against original order of dismissing WP dated 24-6-1998.

16. In the circumstances, the writ petitions bearing numbers 10277 of 1991, 13210 of 1991, 6025 of 1992, 11390 of 1992, 12518 of 1994, 20938 of 1994, 18179 of 1997, 30426 of 1997 and 2375 of 1998 are dismissed.

17. WA No. 1940 of 1998 is dismissed. WA No.461 of 1999 is allowed and the writ petition stands dismissed. In the circumstances, no order as to costs.