

(1997) 07 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 718 of 1997

G. Ramana Murthy

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 29, 29(1), 29(2), 29(3), 8

Citation : (1997) 4 ALT 769 : (1997) 2 APLJ 487

Hon'ble Judges : Lingaraja Rath, J;J. Chelameswar, J

Bench : Division Bench

Advocate : B. Adinarayana Rao, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Lingaraja Rath, J.—In assailing the order of the learned Single Judge rejecting Writ Petition No. 22651 of 1994 in which challenge was made to the order of appointment of the Executive Officer dated 29-8-1990 as also to the revisional order dated 1-10-1994 dismissing the revision, Mr. B. Adinarayana Rao, learned Counsel for the appellant firstly contended of there being no power in the Commissioner of Endowments to appoint the Executive Officer as the power, according to him, vests in the Government alone. It was secondly urged that no appointment of Executive Officer is warranted since the income of the institution is less than Rs. 50,000/-. The last contention of Mr. Rao is that there was no justification for appointment of the Executive Officer as there were no materials to adopt such a course.

2. The petitioner is the hereditary trustee of the institution, Sri. Hatakeswara Swamy Temple, Singupuram, Srikakulm Mandal and district. A report was submitted by the Inspector of Endowments to the Assistant Commissioner of Endowments on 4-11-1989 alleging non-accountability of 1828 bags of paddy due to the institution for the period 1985-86 to 1988-89 as also of Rs. 330/-

cash. It was alleged that no steps have been taken by the appellant to collect the paddy bags or the money besides, an allegation was also made that he was not submitting the accounts of the institution. The matter having moved higher-up, the Deputy Commissioner addressed a letter to the Commissioner on 22-2-1990 bringing such facts to the notice of the Commissioner and urged for appointment of an Executive Officer. The order was passed by the Commissioner on 29-8-1990 appointing the Executive Officer, Group Temples, Srikakulam as the Executive Officer in full additional charge of Sri Hatakeswara Swamy Temple, Singupuram, Srikakulam, because of the situation reported by the Deputy Commissioner and in the interest of public. The appellant filed a revision before the Government in which the order dated 29-8-1990 was stayed on 26-9-1990. The revision was dismissed on 1-10-1994 by the Government reciting that the case had been posted for hearing on 21-12-1993, 16-6-1994 and finally on 8-7-1994, that the appellant, though had been granted sufficient opportunity, yet, had failed to appear and that hence, the prayer of the appellant might have become infructuous. The revisional order was challenged by the appellant in Writ Petition No. 22651 /94 in which an order of interim stay was made on 29-12-1994. That Writ Petition having been dismissed on 21-4-1997, the present appeal has been preferred.

3. Contesting the submissions of Mr. Rao, the learned Govt. Pleader for Endowments submits the Commissioner to have power to appoint the Executive Officer u/s 8 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, "the Act")- She also contends of there having been sufficient material to appoint an Executive Officer.

4. Section 29 of the Act provides under Sub-section (1) that the Government may constitute not more than three charitable or religious institutions or endowments each of whose annual income is rupees fifty thousand but does not exceed rupees one lakh into such groups as may be prescribed. Sub-section (2) provides, 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 under this Act. Under Sub-section (3), the Government is to frame rules prescribing the appointing authorities of the Executive Officers. The second proviso to Sub-section (3) stipulates that the Government would be competent to appoint Regional Joint Commissioner, a Deputy Commissioner or an Assistant Commissioner as an Executive Officer. A reading of the provisions show that primarily, the appointing authority of the Executive Officers would be the authority prescribed under the rules to be framed. The Government is not the appointing authority of the Executive Officers unless they belong to the rank of Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner. Of course, if the rules are framed, the government could reserve the power of appointment of the Executive Officers to itself. But, admittedly, rules u/s 29 of the Act are not framed. Section 155 of the Act saves, inter alia, the earlier rules made under the repealed Act of 1966. But, it is a common ground that even under the 1966 Act,

no rules were framed designating the appointing authority of the Executive Officers. In *K. Srirama Murthy v. Commissioner of Endowments, A.P., Hyderabad and Ors.*, 1991 92) ALT 321., it was held by Hon"ble Justice Sivaraman Nair that u/s 8 of the Act, the appointment of Executive Officers is vested in the Commissioner and not in the State Government. In *Kalluram alias Munnalal Vs. The Commissioner of Endowments and Others*, ., the Division Bench was of the particular view that Section 8 empowers the Commissioner to appoint Executive Officers. This view was also confirmed by another Division Bench in Writ Appeal No. 369 of 1991 decided on 28-3-1991. The un-reported judgment was also followed by a later Division Bench decision in *Pavani Sreedhara Rao Vs. The Government of A.P., Revenue (Endowments) Department and Others*, . It is, thus, now a settled position that the power of appointment of Executive Officers is vested in the Commissioner. This submission of Mr. Rao, hence, must fail.

5. Secondly, the submission that the Executive Officer could not be appointed if the income of the institution is less than rupees fifty thousand also does not hold substance as that is a condition contemplated u/s 29 of the Act and as the appointment is in pursuance of the power u/s 8 of the Act, the power is unfettered and could be exercised wherever circumstances warranting appointment of Executive Officers exist.

6. The third submission of Mr. Rao of absence of materials also does not stand scrutiny. No doubt, in a decision of the Supreme Court in *Pavani Sridhara Rao Vs. Govt. of A.P. and Others*, ., the Court ruled that the power to appoint Executive Officer could be exercised only on relevant data and on necessary facts and materials, but could not be exercised just half-handed without there being any necessity for appointment of Executive Officer for a Temple in public interest. But, as we have already alluded, in fact, there were materials before the Commissioner to consider the appointment of Executive Officer, if necessary. Over a period of years, the appellant was not exercising any diligence to collect the dues, both in cash and kind, of the institution and was not even submitting the accounts. Whether such materials were adequate to appoint an Executive Officer or not is not within the domain of the Court to examine as it is well known that the adequacy or inadequacy of the material to take an executive decision is not for the Courts to scrutinise. If at all there is existence of some materials on the basis of which a reasonable man could be persuaded to take a decision, the quantum of the material would not be for the Court to scrutinise and analyse.

7. The last submission made by Mr. Rao is that if at all there are materials against the appellant, he should have been given opportunity to contest and rebut the same and that the order passed on 29-8-1990, hence, is violative of the principles of natural justice. It is submitted that the report of the Deputy Commissioner was submitted on 22-2-1990 and the order was passed in August, 1990 and that there was sufficient time available for the Commissioner to have issued notice to the appellant and then take a decision after hearing him. No doubt, such a submission would have some persuasion for us, but in the

circumstances of the case, we do not find any merit therein. As has been often said, the principles of natural justice are not couched in a straight jacket and there is no cut and dry formula for its application. The appellant, in effect, had availed of a post-decisional remedy before the Government and had also obtained an interim stay of the order. Thus, he was not affected by the order dated 29-8-1990. But, in spite of sufficient opportunity being given, he never appeared before the Government to substantiate the case or to persuade the Government to agree with him that actually there are no materials before the Commissioner to take the impugned action. It is only because of his inaction that the revision was dismissed. In the circumstances, it is to be held that the appellant had, by his conduct, acquiesced with the action taken by the Commissioner and also as to the existence of the materials against him.

8. In that view of the matter, we do not find any merit in this Writ Appeal and it is accordingly dismissed.