

(1982) 01 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7600 of 1981

Jeevakaruna Annadana Samajam, Chittoor

APPELLANT

Vs

Assistant Commissioner, Endowments, Chittor and Others

RESPONDENT

Date of Decision : 22-01-1982

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966
— Section 15(3)
Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 19(1), 19(6), 226

Citation : AIR 1982 AP 214 : (1982) 1 APLJ 203

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Advocate : R. Venugopal Reddy, for the Appellant; N. Raghava Rao and Govt. Pleader, for the Respondent

Judgement

1. The petitioner is a society registered on 2-10-1935 under the Societies Registration Act. It has two classes of members, ordinary members and life members. It has specific rules providing for its internal management. Its Managing Committee consisting of a President, Vice-President, Secretary, Joint Secretary and Treasurer, is elected by the general body of its members for every one year. The society is a charitable institution. It appears to be doing well and being well-managed. Never there was any scheme suit filed under S. 92 of Civil P.C. or nay proceedings initiated under the Endowment Acts against this society. It is providing with free meals, of course subject to the limitations of resources. The number of people so fed is claimed to have never fallen below fifteen persons per day. It has built a Kalyana Mandapam and provided a building for starting a school.

2. Unfortunately enough, what appears to me, such a good and charitable institution first started in the early twenties of this century and well managed over all these sixty long years, has new been forced to come to this Court seeking redresal of grievances. Acting under S.15 cl. (3) of the A. P. Charitable

an Hindu Religious Institutions and Endowments Act, 1986 thereafter called as "the Endowments Act), the Assistant Commissioner of Endowments Department, Chittoor, appointed five outsiders as trustees of the society, Clearly they are so appointed to manage the properties hitherto carefully garnered by the society over all these years. Prima facie the action is unjust and unjustifiable. But, cannot redress that situation of inequality because the aforementioned Endowments Act in general and S.15(3) in particular, prima facie seems to empower the Assistant Commissioner with the power to appoint what are called "non-hereditary trustees". S.15 cl.(3) reads thus:

The question whether this power under the Endowments Act could ever had been intended to completely wipe out the autonomy of a well-managed charitable institution as well as that of an ill-managed one is neither raised in the writ petition nor argued before me. Deprived of the benefit of argument and counter argument, I propose to express no final opinion on that question as applied to this case in particular. But I wish to say generally that no public purpose is served by bringing every charitable institution indiscriminately under the managerial supervision and control of a Government department. A well-managed charitable institution need not be subjected to the administrative inefficiency and redtape of which Governments are justly famous. Surely such an action might even in the short run discourage the noble-minded and kind-hearted from starting these charitable institutions. In England, Charity Commissioners are not to interfere with the day-to-day management of the charitable institutions. Of course where these charities are ill-managed. defeating the very object of the charity, it would be not only the right but also the duty of the Courts representing the sovereignty of the State to set right those matters even by displacing the trustees and by appointing new trustees. That is what the lawyer calls an extreme measure. In S. 92 of C. P. C we find an instance of such statutory power in our country. In my opinion the language of S.15 of the Endowments Act also should be read similarly. That section says that the authorities shall constitute a Board of Trustees in the case of an endowment for charitable institution with non-hereditary trustee. Notwithstanding that mandatory nature of the languages in S.15 cl.(3) of the Act, it appears to me, prima facie. possible to argue that the power under the abovementioned Act to appoint trustees should be limited to be exercised only to the principles analogous to S. 92 of C. P. C But as this point is neither raised nor argued, I say nothing more on it.

3. The order of the Assistant Commissioner appointing respondents 2 to 6 is attacked on three grounds. They are :- (1) the exercise of the power is bad, because it abridges the right of the members of the Petitioner-Society to form Associations and Unions guaranteed to them under "Art" 19(1) (c) of the Constitution. (2) The order is bad, because t here is no notice given to the existing President before making the impugned order by the Assistant Commissioner and (3) The order is bad, because it is made by the Assistant Commissioner on the basis that the petitioner-society falls under S.6 cl. (c) of

the Act with an annual income below Rs.20,000/- per year while in truth the annual income of the society is more than Rs.20,000/- per year and that therefore it falls under S.6 (b) and the jurisdiction to appoint a non-hereditary trustee in such a case would belong to the Deputy Commissioner and not the Assistant Commissioner of Endowment Department.

4. I may first deal with the last submission of the petitioner. The petitioner's argument as mentioned above is that the annual income of the society will be above Rs. 20,000/- and below one lakh and therefore, the society falls under S.6(b) of the Act did not under S.6 (c). Accordingly, the petitioner argues that the jurisdiction to appoint a non-hereditary trustee belongs to the Deputy Commissioner and not the Assistant Commissioner of Endowment Department. This question of fact is squarely denied by the Assistant Commissioner in this writ petition. The Assistant Commissioner says on oath that for the past preceding three years of 1978-79, 1979-80 and 1980-81, the petitioner was assessed for contributions under S.59 of the Act each year on Rs.5,700/- Rs.5,774/- and Rupees 34,539/- respectively. The average annual income of the petitioner for the three past consecutive years, therefore, does not exceed Rs.20,000/- It is not indispute that if the average annual income of the institution does not exceed Rs.20,000/- for the immediate preceding three years. The Assistant Commissioner alone will have jurisdiction in the case of appointment of non-hereditary trustees. Accepting the statement of the Assistant Commissioner, which is based upon the official demands made by the Department on the petitioner-society for contributions, I hold that the petitioner-society falls under the jurisdiction of the Assistant Commissioner and, accordingly, reject the last argument of the petitioner.

5. I now consider the first argument which is elaborated by Mr. Venugopala Reddy at considerable length. First I set the argument. IT runs somewhat like this Article 19(1)(C) of the Constitution guarantees to a citizen of India a fundamental right to form Associations and Unions. This right can only be abridged by law imposing reasonable restrictions which are made in the interests of the sovereignty and integrity of India, Public order of morality. This right includes the right of the members to manage their own affairs according to the constitution of the society. The argument of Sri Venugopala Reddy is that the power exercised by the Assistant Commissioner though authorized by S.15 (#) of the Act is unconstitutional because it infringes the fundamental right of the members of the petitioner society to form associations in the sense of the members to elect their own managing body. There can be little doubt that if the promise of this argument is truly strong and sound no Asst. Commissioner could ever take over the management of the society. If this argument is accepted and it is held that the right of the members of the petitioner-society to form association is infringed by the action of the Assistant Commissioner, the action of the Assistant Commissioner cannot be saved under the permissive provisions of Art, 19(4) of the Constitution. The question, therefore, is whether the right of the members of the petitioner society to form an Association is at all infringed.

6. Sri Venugopala Reddy says that this right is infringed because the members of the petitioner-society have a right to constitute a managing body and, thereafter to manage the affairs of the society and its properties and as that right has been taken away by the order of the Assistant Commissioner, appointing outsiders as trustees to manage the property Art. 19(1)(C) of the Constitution is attracted. In support of his argument Sri Venugopala Reddy relied upon two judgments of the Supreme Court one reported in Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, and the other reported in D.A.V. College, Vs. State of Punjab and Others, . But I must say that his strong reliance is on Damyanti's case and he merely referred to certain observations in D. A. V. College case.

7. The right to form associations is guaranteed under Art. 19(1)(c) of the Constitution. It is an individual right. It means that one citizen of India can associate himself with another. I hope even with non-citizen also. The word "form" ensures a degree of permanence to the association. The judgement of the Supreme Court in The State of Madras Vs. Srimathi Champakam Dorairajan, ruled that the fundamental rights are individual rights guaranteed to the citizens. The Supreme Court observed that:

"The right to get admission into any educational institution of the kind mentioned in cl.(2) is a right which an individual citizens as a citizen and not as a member of any community or class of citizens".

No doubt there are group fundamental rights also like those guaranteed to minorities but we are not concerned with them now. From a reading of the language of Art. 19(1)(c) in the light of the pronouncements of the Supreme Court, it would appear that what all Art. 19(1)(c) guarantees to an Indian citizen is a right to associate himself with others. After its formation its governance is not guaranteed by the Constitution in express terms. In other words what all Art. 19(1)(c) guarantees is right to form associations leaving the management's rights to be governed by the appropriate law. Article 19(1) prevents forming of any association on the grounds of sovereignty and integrity of India or public order or morality. On those grounds the State would be competent even to prevent formation of associations. It, therefore, appears to me does not extend beyond the exercise of individual right to form an association. To put it in other words, while Art, 19(1)(c) guarantees the right to form an association, it does not hold out any such guarantee regarding management of such association. That area is left free to law to march upon. The management of an association and its functioning is on one's individual right. Such a right belongs to the collective body of the association. On that basis Art. 19(1)(c) guaranteeing an Individual right afforded no guarantee in the matter of exercise of management-right. This appears to me to be the view which has been taken by the Supreme Court in Raghubar Dayal Jai Prakash Vs. The Union of India (UOI) and Others, . In that case S.6 of the Forward Contracts (Regulation) Act, 1952 which imposes certain restrictions on the recognition of an association was attacked as violating the right to form associations guaranteed under Art. 19(1)(c) of the Constitution.

It was argued in that case by Late Nambiar that while the Constitution had guaranteed the right to form an association including one for fostering or regulating forward trading, that where the object of the association is lawful the citizen through an association and the association itself are entitled by virtue of the guaranteed right, to freedom from legislative interference in the achievement of its object except on grounds germane to public order or morality etc. In other words, the freedom guaranteed under Art. 19(1)(c) of the Constitution should be read as extending not merely to the formation of the association as such, but to the effective functioning of the association so as to enable it to achieve its lawful objectives. On that premise it was argued that the aforementioned S.6 of the Forward Contracts(Regulation) Act, 1952, interfering with internal arrangement in the matter of selecting the personnel to manage it, the framing of the bye-laws and regulations which shall govern the relationship between the association and its members etc. is invalid as those matters do not come within the description of permissible heads of interference under Art. 19(4) of the Constitution. The argument which is squarely advanced in support of the extended meaning of the right under Art. 19(1)(c) was rejected by the Supreme Court. The above judgment was cited with approval and authority in D.A.V. College, Vs. State of Punjab and Others, . A five Judges judgment of this Court rejected similar argument in Seethapathi Nageswara Rao and Others Vs. The Govt. of Andhra Pradesh and Others, (FB), Our Court has observed (st p.130):

"There is a material difference between individuals claiming a right to form an association and the right of members of a co-operative society who formed an association to carry on business or trade under the provisions of the Act".

It was held in that case that the Co-operative Societies Act does not impose any restrictions on the individual rights to form an association but only affects the rights of the Co-operative societies to do business which is a different and distinct right from that of the individual members. The point I wish to highlight here is the distinction the above case draws between the individual right to form associations and the collective right to manage the association that belongs to the association.

8. But Mr. Venugopal Reddy's strongest reliance is on the judgment of the Supreme Court reported in Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, A very casual reading of that judgment may incline one to a prima facie view that the right to form an association does not come to an end with the individual citizen forming an association. But a careful reading of that judgment is sure to displace these first impressions. Damyanti v. Union of India (Supra) has been considered by the aforementioned judgment of the Constitution Bench in D.A.V. College, Vs. State of Punjab and Others, and also by a five Judge Bench of this Court reported in Seethapathi Nageswara Rao and Others Vs. The Govt. of Andhra Pradesh and Others, . These cases interpreted Damyanti's case as not extending the right of the citizen under Art. 19(1)(C) beyond the limits of forming of an association. Before Damyanti's case, the Supreme Court rejected a

similar argument.

9. Further it is possible to read Damyanti's case itself as constituting no exception to the general rule laid down by the Supreme Court in the aforementioned case in Raghubar Dayal Jai Prakash Vs. The Union of India (UOI) and Others, the whole decision turned upon the fact that impugned law destroyed the right of the existing members to continue their association. The Court held that "the right to form associations has been violated because the impugned Act does not merely regulate the administration of the affairs of the society; What it does is to alter the composition of the society itself. The result of this change in composition is that the members who voluntarily formed the association, are now compelled to act in that association with other members who have been imposed as members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of an existing Association clearly interferes with the right of the existing members of the Association which was voluntarily formed by the original founders. The right to form an association, in our opinion necessarily implies that the persons forming the associated with only those whom they voluntarily admit in the Association and any law, by which ,members are introduced in the voluntary association without any option being given to the members to keep them out or any law those who have violating the right guaranteed under Art, 19(1)(c) is confined to the initial stage of forming an Association an does not protect the right to continue the Association with the membership either chosen by the founders or regulated by rules made by the Association itself, the right would be meaningless because, as soon as an Association with its composition, so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association".

10. The emphasis of the judgment throughout has been on the offending portions of the impugned statute altering the composition of the existing Association by adding to it, and subtracting from it, Nowhere we find the Supreme Court protecting the management right of an association. On the other hand the Supreme Court observed that "the impugned Act does not merely regulate the administration of the affairs of the society".

Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, is no authority for the position that Article 19(1)(c) would extend beyond keeping the association intact. That judgment projects that associations from their infancy to exist but does no more. Applying that reason to the facts of this case, I find that the petitioner's composition is not at all altered, neither new members are forced upon the existing members of the peritonea-society nor the existing members removed. In these circumstances I hold that the argument of the learned counsel for the petitioner that the right of the members of the petitioner-society guaranteed under Art. 19(1)(c) is offended cannot be accepted. The

action of the Assistant Commissioner of Endowments pertains not to the right of the petitioner-society to form an association or to keep it intact and inviolable but only to the right of management of the properties of the Association. The later is clearly, in my opinion , not a part of the guaranteed right under Art, 19(1) (c) of the Constitution.

11. There is another reason why this argument of the petitioner cannot be accepted. The whole argument of the petitioner appears to me to be based upon one wrong premise implying that the members of the petitioner-society have inviolable right to manager the properties which are endowed by them for the purposes of carrying on the charity. This, in my opinion, is not correct. When a charity is created, the person creating the charity will lose proprietary interest under the General Law in such property endowed in the charity. Thereafter the kind-hearted and the generous minded donor would only be left with the pleasure and satisfaction derived from the services his charity has been rendering. At the best he can only have a right to manager the charity. But this right to manager the charity is subject to the parens patriae jurisdiction of the Crown which are essentially matters of public concern. (see Halsbury's Laws of England, Vol.5, Fourth Edn. at page 302 says:

"The character of `parens patriae' which formerly imposed upon the Crown the duty of watching over the interests of ward makes it the protector of charity in general".

It follows that there is no right in the members of the petitioner- society to claim any management over the property belonging to the charitable institution in his case. The judgment of the Supreme Court in Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others, held for this reason that even an office of hereditary trustee is not a property right and a hereditary trustee has got only a bare right to manage and administer the secular estate of the institution or the endowment and they do not have proprietary or beneficial interest either in the corpus or in the usufruct of the estate. For these reasons I reject this argument of the petitioner.

12. It was possible to argue rather attractively that the above view limiting are restricting the fundamental right to form an association merely to a right to form an association and keep its individuality intact by rendering the functioning of the association dependent upon the law, makes the right under Art. 19(1)(c) itself illusory. But the judgment of the Supreme Court reported in All India Bank Employees' Association Vs. National Industrial Tribunal and Others, holds that Art 19 grants rights to the citizen as such, and association cannot lay claim to the fundamental rights guaranteed by that Article Solely on the basis of their being an aggregation of citizens. The theory of concentric circles extending to the fundamental rights has been rejected in that case and followed in the above D.A.V. College, Vs. State of Punjab and Others, . I therefore, hold that the action of the Assistant Commissioner, Chittor does not infringe any fundamental right of the petitioner.

13. It then remains to consider the argument of the learned counsel Shri Venugopal Reddy that the order is bad for not giving notice to the existing President. This agreement of the learned counsel is based upon judgment of Jumarayya, C.J., and Kondaiah J., reported in N. Ramalingayya v. Commr., Ch. & H. R. I. E., Hyderabad (1970) 2 APLJ 422. Answering an argument based on Art. 14 and alleged discrimination under S.15 of the Act the learned Judges in that case observed that :

"Even where the discretion is given, the authorities cannot act arbitrarily in coming to the conclusion that it is the interests of the institution to appoint non-hereditary trustees. Such a conclusion can be reached only after giving notice and a reasonable opportunity to the hereditary trustee or trustees to make their representation for it is they who are interested in the matter of the management and better administration of the affairs of the institution".

These observations do not appear to have any bearing on the question of giving notice to a non-hereditary trustee. Secondly these observations are made on the assumption, which is the basis of the entire judgment of the Division property right and the imposition of non-hereditary trustee by the Endowment Commissioner under S. 15 of the Endowment Act affects that property right and it should, therefore, be governed by the principles of natural justice. Now that basic assumption of the Division Bench has been upset by the judgment of the Supreme Court referred to above in Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others, . The consequential observation of the Division Bench can no longer be held to be good law. Cessants Ratione Legis Cessat Ipsa Lex (See Broom P. 97). In fact it would be wholly purposeless to give a notice to the existing trustees except when they are sought to be removed during their term on the basis of their ,mis-management or misconduct or such other grounds. As that is not the case here the question of giving notice does not arise. This argument is also, accordingly, rejected.

14. For all the aforesaid reasons, this writ petition fails and is , accordingly, dismissed, but in the circumstances without costs. Advocate"s fee Rs. 100/-

15. Petition dismissed.