
(1972) 08 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 297 of 1968

K. Rama Rao

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 02-08-1972

Acts Referred:

Mysore Religious and Charitable Institutions Act, 1927 — Section 41 (4), 76
Mysore Religious and Charitable Institutions Regulation, 1927 — Regulation 4, 4 (7), 5 (5)

Citation : AIR 1973 Kar 108 : AIR 1972 Kar 108 : (1972) 2 MysLJ 428

Hon'ble Judges : H.B. Datar, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : T.S. Ramachandra, for the Appellant; K.S. Puttaswamy, 1st Addl. High Court Govt. Advocate, for the Respondent

Judgement

G.K. Govinda Bhat, J.—This matter arises under the Mysore Religious and Charitable Institutions Act, 1927 (hereinafter called the Act"). The petitioner is the Manager of Sureshwara Deyaru Temple in Thirthahalli Taluk, which is a Muzrai Institution governed by the Act. The first respondent is the State of Mysore; the second respondent is the Commissioner for Religious and Charitable Endowments and the third respondent is the Tahsildar and Muzrai Officer, Thirthahalli Taluk. In exercise of the power conferred by Section 41 (4) of the Act, the former State of Mysore had framed Rules which, inter alia, provided for sanction of scale of expenditure in Muzrai Institutions governed by the Act. In the purported exercise of that power, the second respondent by his proceedings dated 27th September 1966, besides fixing the scale of expenditure for the institution of the petitioner, determined that a sum of Rs. 1,978/- was payable towards what is termed as "percentage contribution" and "reserve amount" to the Muzrai Establishment Fund. Prior to the said proceedings, the said Institution was paying a sum of Rs. 123/- towards "percentage contribution" and Rs. 430/- towards "reserve fund". Pursuant to the proceedings of the second respondent the third respondent issued a demand notice to the petitioner on 29th December

1967 demanding payment of a sum of Rs. 1,978/- alleged to be due for the year 1966-67 and it was stated in the said notice that in the event of default the amount will be recovered as arrears of land revenue. The petitioner has challenged the said demand as also the proceedings of the second respondent on the basis of which the said demand was made. The petitioner has prayed for a writ in the nature of mandamus directing the third respondent to forbear from enforcing the impugned demand notice (Ext. "C") dated 29th December, 1967. He has also prayed for quashing the proceedings of the second respondent in so far as it directs the setting apart of a sum of Rs. 1,978/- towards "percentage contribution" and "reserve" to the Muzrai Establishment Fund.

2. It is common ground that there is no provision made in the Act empowering the authorities under the Act. to levy and demand "percentage contribution" or "reserve" to the Muzrai Establishment Fund. The learned High Court Government Advocate submitted that Rule 4 of the Rules empowers the Deputy Commissioners in respect of Minor Institutions and Rule 5 empowers the Commissioner in respect of Major Institutions, to sanction scale of expenditure of such Institutions and that power comprehends within its ambit the power to fix "percentage contribution" and "reserve" to the Muzrai Establishment Fund. He also submitted that the petitioner and his ancestors had entered into agreements agreeing to pay such contributions and that in accordance with the said agreement payments were made in the earlier years.

3. Sub-section (4) of the Section 41 of the Act empowers the State Government to make Rules prescribing the scale of expenditure of the Muzrai Institutions governed by the Act. Sub-rule (7) of Rule 4 states that the Deputy Commissioners as Muzrai Officers shall have power to appoint Dharmadarsis for all minor Institutions and sanction scale of expenditure therein. Sub-rule (5) of Rule 5 confers similar powers on the Muzrai Commissioner in respect of all Major Muzrai Institutions.

4. We are unable to accept the contention of the learned High Court Government Advocate. The power conferred by Rule 4 or 5, read with Sub-section (4) of Section 41 does not empower the Muzrai Officers or the Muzrai Commissioner as the case may be to levy and collect any contribution or demand any amount as "reserve" from the income of Muzrai Institutions. What the said Rules empower is merely to fix standard scale of expenditure to be incurred in each Muzrai Institution. The scales of expenditure in Muzrai Institutions have to be fixed in accordance with their immemorial custom. Such expenditure would relate to performance of Poojas, Offerings to deities, payments to Archaka and temple servants, maintenance of buildings etc. It is impossible to conceive that the power to sanction scales of expenditure in an institution would include the power to levy any contribution to the Muzrai Establishment Fund on the basis of the income of the Institution. It is relevant to note that under the Madras Hindu Religious and Charitable Endowments Act. 1951, there are provisions specifically empowering the law of contribution for services rendered by the Endowment

Board vide Section 76 of the Madras Act. Section 51 of the said Act provides for fixing standard scales of expenditure. There are similar provisions in Acts governing Religious Endowments in other States also.

5. There is also no force in the contention that the petitioner or his ancestors had entered into the agreement with the Muzrai Authorities agreeing to make contribution and therefore the petitioner is barred from resisting the impugned demand. If the levy is not authorised by law, the petitioner who is the Manager, had no authority to enter into any such agreement. The properties belong to the deity to whom the properties were endowed. Under our Constitution, the State or its Officers have no power to levy or collect any money without the authority of law. In the instant case, the authority of law for making the levy is lacking and therefore, the levy made by the second respondent on the petitioner's institution by his proceedings dated 27-9-1966 is illegal. It follows that the demand made by the 3rd respondent to enforce an illegal levy cannot be allowed to be enforced. The respondents have no authority to levy or collect any amount which is not authorised by law.

6. For the above reasons, we issue a writ in the nature of mandamus directing respondents 2 and 3 to forbear from levying or collecting from the petitioner's institution any amount as "percentage contribution" or "reserve" to the Muzrai Establishment Fund and we further direct the 3rd respondent to withdraw his demand notice dated 29-12-1967 (Ext. "C"). It is ordered accordingly.

7. No costs.