(1996) 06 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No. 12883 of 1989

K. Ramachandra Srinivas Kini APPELLANT

Vs

Deputy Commissioner, Hindu Religious and Charitable Endowments, Mangalore, Dakshina Kannada and Another RESPONDENT

Date of Decision : 24-06-1996

Acts Referred:

Citation : (1997) 1 KarLJ 118

Hon'ble Judges : Tirath S. Thakur, J

Judgement

1. An order dated 29th of March, 1989 passed by the Deputy Commissioner, Hindu Religious and Charitable Endowments, Mangalore under Section 74(3) of the Madras Hindu Religious and Charitable Endowments Act, 1951 is what is challenged in the present writ petition. The facts in brief may be set out thus: The petitioner was working as Managing Trustee of Sri Katapadi Venkataramana Temple, Katapadi, Udupi Taluk. An audit report prepared for the period between 1-7-1971 and 16-11-1973 brought to light certain irregularities allegedly committed by the petitioner in his capacity as the Managing Trustee. A notice was accordingly issued by the Deputy Commissioner calling upon the petitioner to show-cause as to why a sum of Rs. 12,944.29 ps. representing the loss caused by his acts of omission and commission be not recovered from him under Section 74(3) of the Act aforesaid. On receipt of the notice, the petitioner submitted a reply dated 21st October, 1979, in which he inter alia pointed out that a copy of the audit report had not been furnished to him to enable him to submit his explanation to the same. Some time later, however, the petitioner appears to have filed a reply dated 18th of June, 1983 to the objections raised in the audit report. Based on the materials so available before the Commissioner, an order dated 7th of August, 1985 was passed by him certifying a sum of Rs. 12,944.29 ps. to be recoverable from the petitioner. The petitioner next filed a representation dated 14th of August, 1985 seeking reconsideration of the aforesaid order. The matter appears to have remained under consideration of the Deputy Commissioner till 12th of June, 1989 when he passed a fresh order

determining a sum of Rs. 12,783.35 ps. to be recoverable from the petitioner and asking him to deposit the same within one month, failing which threatening to recover the amount so determined as arrears of land revenue. Aggrieved, the petitioner has come up with the present writ petition as already pointed out earlier.

2. Sri M.N. Hegde, learned Counsel appearing for the petitioner, raised a short ground in support of the petition. He argued that even though the petitioner had submitted his explanation to the show-cause notice as also the audit report, the Deputy Commissioner had not considered the same while making the impugned order. The Deputy Commissioner it was contended had passed the impugned order entirely on the report of the Assistant Commissioner without due and proper application of mind on his part to the points raised by the petitioner, which he was supposed to do looking to the nature of the proceedings and their far-reaching implications.

3. There is substance in this submission. Section 74 of the Madras Hindu Religious and Charitable Endowments Act, 1951, which is admittedly applicable to the proceedings initiated by the Deputy Commissioner may at this stage be extracted to the extent the same is relevant for our purposes:

"Section 74.-(1) The Area Committee or the Commissioner, as the case may be, shall send a copy of every audit report relating to the accounts of a religious institution to the trustee thereof, and it shall be the duty of such trustee to remedy any defects or irregularities pointed out by the auditor and report the same to the Area Committee or the Commissioner, as the case may be.

(2) The Area Committee shall forward to the Commissioner a copy of every audit report received by it under clause (a) of Section 72 and the report, if any, of the trustee made under sub-section (1), together with such remarks as the Area Committee may wish to make thereon.

(3) If, on a consideration of the report of the auditor alongwith the report, if any, of the trustee, and the remarks, if any, of the Area Committee, the Commissioner thinks that the trustee or any other person was guilty of misappropriation or wilful waste of funds of the institution or of gross negligence resulting in a loss to the institution, the Commissioner may, after giving notice to the trustee or such person to show-cause why an order of surcharge should not be passed against him and after considering his explanation, if any, by order, certify the amount so lost and direct the trustee or such person to pay within a specified time such amount personally and not from the funds of the religious institution:

Provided that if, in respect of any expenditure or dealing with trust property, the trustee or such person had obtained the directions of the Area Committee or of the Commissioner and had acted in accordance with such directions, he shall not be held responsible".

4. A bare reading of the above provision particularly sub-section (3) of Section 74 leaves no manner of doubt that the Commissioner has on the basis of the report of the auditor, the report of the trustees, and the remarks of the Area Committee, if any and the explanation of the trustee concerned to determine as to whether the trustee has been guilty of any misappropriation, wilful waste of funds of the institution or gross negligence resulting in any loss to the institution. The consideration of the audit report, the report of the trustees, the Area Committee as also the explanation of the person concerned is meant to make the determination of the question fair and objective. No such fairness or objectivity can be inferred unless the question is determined after due and proper application of mind. Application of mind in turn is best demonstrated by disclosure of the mind which implies disclosure of the reasons which have influenced the decision. In other words the Commissioner is supposed to make what is known as a ''speaking order'' i.e., an order which speaks out the reasons for the conclusion drawn instead of leaving the same to imagination.

5. In the instant case, the Commissioner has not either indicated the nature of the acts of omission and commission of which the petitioner was found guilty nor has he considered the petitioner''s explanation to the same. The order, therefore, does not demonstrate due and proper application of mind to the material available on record and in particular the petitioner''s defence to the charge made against him. In the very nature of the proceedings envisaged by Section 74, the Commissioner was bound to do so and inasmuch as the Commissioner has neglected this requirement, the impugned order is rendered unsustainable.

6. In the result, this petition succeeds and is hereby allowed. Order dated 29th of March, 1989-Annexure-E to the writ petition is hereby quashed and by a mandamus the 1st respondent, Deputy Commissioner, is directed to pass a fresh order after consideration of the explanations dated 21st of October, 1979, 18th of June, 1983 and 14th of August, 1985 submitted by the petitioner. The needful shall be done by the Deputy Commissioner as far as possible within a period of 3 months from the date a copy of this order is produced by the petitioner before him. In order to avoid any further delay in the disposal of what apparently is a very old matter, I direct the petitioner to appear before the Deputy Commissioner on 22nd of July, 1996. Needless to mention that in case the petitioner does not appear on the date given or on any subsequent date fixed for the purpose of disposal of this case, the Deputy Commissioner shall be at liberty to proceed ex parte and pass appropriate orders on the subject. No costs.