

(2010) 03 AP CK 0040
In the Andhra Pradesh High Court
Case No : Writ Petition No. 19523 of 2009

K. Shankar Reddy

APPELLANT

Vs

Regional Joint Commissioner, Endowments Department and
Others

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 12, 12(1), 28, 29, 29(5)

Citation : (2010) 3 ALT 702

Hon'ble Judges : P.S. Narayana, J;G.V. Seethapathy, J

Bench : Division Bench

Advocate : K.V. Subrahmanya Narusu, for the Appellant; G.P. for Respondent
Nos. 1 and 2, D. Sudarshan Reddy and V. Hariharan, for the Respondent

Final Decision : Dismissed

Judgement

G.V. Seethapathy, J.—This writ petition is filed seeking writ of Certiorari to call for the records and quash the Memo No. A/650/2009 dated 18.08.2009 issued by the first respondent-Regional Joint Commissioner, Endowments, as being without jurisdiction, illegal, arbitrary and in violation of principles of the A.P. Charitable & Hindu Religious Institutions & Endowments Act 1987 [for short "the Act"].

2. Heard the learned Counsel for the petitioner, the learned Government Pleader for Endowments, representing the respondents 1 and 2 and the learned Counsel for the respondents 3 and 4. Perused the records.

3. The petitioner was one of the Founder Trustees of Sri Venkateswara Swamy Temple, Santhosh Nagar, Hyderabad, which was constructed in 1981 with the donations and contributions from public between 1981-1988. The administrative control of the temple was taken by the Government of Andhra Pradesh, by registering the same u/s 6[c][ii] of the Act. The temple administration was managed by a Trust Board, appointed from time to time by the Assistant Commissioner and in the year 1997, the administration of the temple was

entrusted by the Assistant Commissioner to one N. Chadrasekhar declaring him as Founder Trustee. Subsequently, the petitioner and one P. Narsing Rao - 3rd respondent were also recognized as Founder Trustees along with N. Chandrasekhar by proceedings dated 22.01.2003 and all three have been managing the affairs of the temple. The 2nd respondent-Assistant Commissioner by proceedings dated 05.07.2003 fixed the rotation system for the administration of the temple among all the three founder trustees for a period of four years each, commencing the cycle with P. Narsing Rao - 3rd respondent. The term of P. Narsing Rao was over by 09.07.2007 and he handed over the administration to the petitioner, with a balance amount of only Rs. 3,000/- in the savings bank account. The petitioner claims that he has improved the temple by raising donations from the devotees and got constructed Dhyanamandiram, office room, and a store room costing Rs. 6,50,000/- and also deposited a sum of Rs. 4,60,000/- in Allahabad Bank, Santhosh Nagar branch towards temple funds. The petitioner alleges that on a false complaint made by 3rd respondent, the first respondent by her proceedings dated 18.08.2009 dispensed with operation of the bank account jointly by the petitioner and the Executive Officer and ordered operation of the joint account of the temple with Allahabad Bank, jointly by the 2nd respondent and the Executive Officer by memo No. A/650/2009 dated 18.08.2009. The said proceedings are impugned in this writ petition, inter-alia, on the ground that the first respondent not being the appointing authority has no competence to take any action against the trustee u/s 28 of the Act and she has no jurisdiction to pass the impugned order and the impugned order was passed without giving any notice to the petitioner and without conducting any enquiry into the allegations and thereby the principles of natural justice are violated.

4. The first respondent filed counter contending in brief are as follows:

The local devotees of the temple gave oral and written complaints that the petitioner, who is the founder trustee of the temple, is committing fraud by colluding with one P. Venkateswara Rao, Junior Assistant. As per Section 29 of the Act, the Executive Officer is solely responsible for maintenance of the income and expenditure and to hold and operate the bank account and the trustee is not entitled as a matter of right to maintain and operate the bank account on behalf of the temple jointly with the Executive Officer. As the complaints were received from the devotees about the misconduct and misuse of the funds by the petitioner, it became inevitable to cancel the cheque power pending enquiry into the complaints by the Assistant Commissioner, Endowments. By order dated 18.09.2009 the Commissioner, Endowments Department, ratified the first respondent's action. The first respondent visited the institution at the instance of the devotees on 14.10.2008 and gave certain instructions to the founder trustee and the Executive Officer to take necessary steps in connection with the pending works, but no action was taken by them. Once again, the first respondent visited the temple on 05.08.2009 in pursuance of the complaints from the devotees. It was found that certain works were taken up by the founder trustee without obtaining technical and administrative permissions from the department,

incurring huge expenditure. As the petitioner was holding joint cheque power to operate the bank account, which was being misused, the joint cheque power was dispensed with pending enquiry by the 2nd respondent. It was only an administrative measure taken to avoid unnecessary steps. After a detailed enquiry by the 2nd respondent, necessary disciplinary action, as contemplated u/s 28 of the Act will be taken, if found necessary. The impugned order was not disciplinary action as contemplated u/s 28 of the Act, but it is only an administrative measure to prevent illegal activities of the petitioner.

5. The 3rd respondent filed a counter with similar averments as contained in the counter of first respondent and supporting the action taken by the first respondent in withdrawing the joint cheque power from the petitioner.

6. The 4th respondent claiming to be a devotee of the temple, got herself impleaded and filed a separate counter, alleging that the petitioner has been mismanaging the affairs of the temple and the petitioner has no vested right to operate the bank account and hence, the action taken by the first respondent is just and proper.

7. The petitioner filed reply-affidavit, reiterating the averments made in the affidavit filed in support of the writ petition and contending that there is no power of superintendence conferred on the first respondent under G.O.Ms. No. 81, Revenue (Endts.I) Department, dated 25.01.1989, and such power is specifically vested in the Commissioner alone u/s 8 of the Act. There is no prohibition in Section 29 of the Act that the trustee cannot be associated with the Executive Officer to jointly operate the bank account. In the interest of financial discipline and better management, the founder trustee was associated with the Executive Officer in the operation of the bank account from 1997 and the same was never questioned. The allegations of fraud and mismanagement made against the petitioner are false. Even if, any complaints were received against the petitioner, the first respondent has no power or authority to cancel the joint cheque power. The impugned order is vitiated due to violation of the principles of natural justice and the same cast a slur and a stigma on the conduct and character of the petitioner. The post-facto ratification of the action of the first respondent by the Commissioner does not make the impugned order valid when it is otherwise illegal and without jurisdiction. In fact, the Commissioner on 18.09.2009 only ratified the order of the first respondent in issuing deputation orders to the Executive Officer and the Junior Assistant but not with regard to the joint cheque power of the petitioner.

8. This writ petition, initially, came up for consideration before one of us (Justice P.S. Narayana) and by order dated 04.11.2009, the matter was referred to the Division Bench, raising the following questions.

1. Whether the order under challenge can be said to be an order simply withdrawing a mere privilege relating to which there is no enforceable legal right to the writ petitioner or the same to be taken as one attaching stigma to the writ

petitioner?

2. If so, whether the order under challenge can be said to be in accordance with the principles of natural justice or in violation thereof?

3. Whether the first respondent has authority or jurisdiction to make such an order in the light of the provisions of the Act and also in the light of G.O.Ms. No. 81, Revenue (Endowments-I) Department, dated 25.01.1989 referred to above?

4. When there is no specific ratification in this regard, can the post-ratification be taken as a valid ratification in the eye of law in the facts and circumstances of the case?

5. What is the scope and ambit of Section 29 of the Act in this regard especially in the light of the serious allegations, which had been made as against the writ petitioner?

9. As rightly observed in the reference order, when the above questions are answered, the writ petition itself gets disposed of finally. Hence, with the consent of the parties, the writ petition itself is taken up for final hearing and disposal.

10. It is not disputed that the subject temple was registered as institution, falling under the provisions of Section 6[c] of the Act and the Assistant Commissioner is the administrative authority for the same subject to the administrative control of the Regional Joint Commissioner. The petitioner was recognized as one of the founder-trustee along with two others i.e., one P. Narasing Rao (3rd respondent herein) and N. Chandrasekhar and a system was evolved for rotation among the three founder trustees for a period of four years each by the 2nd respondent, by proceedings dated 05.07.2003, to ensure better management. The term of four years of 3rd respondent was over by 09.07.2007, and the petitioner thereupon took up the management. He claims to have improved the financial situation of the temple by raising funds from the devotees and taken up several developmental works. The respondents 1 and 2, however, contend that several complaints were received against the petitioner from the devotees and the first respondent also inspected the temple personally on 05.08.2009 and in view of the complaints received and to ensure better administration and to avoid mismanagement and misuse of the funds, impugned memo dated 18.08.2009 was issued dispensing with the operation of the bank account jointly by the petitioner and the Executive Officer and permitting the operation of the said account lying with Allahabad Bank, Santhosh Nagar branch, jointly by the Assistant Commissioner and the Executive Officer. In the impugned memo, reference is made to the visit of the first respondent to the temple and to the complaints received against the petitioner and also the necessity to ensure smooth administration of the temple. The said action of the first respondent in withdrawing the joint cheque power from the petitioner is assailed firstly on the ground that the first respondent has neither competence nor authority to pass impugned orders and secondly, that the impugned order is vitiated due to non-compliance with the principles of natural justice, as no notice was given to the

petitioner to show cause against the proposed action, though proposed action would cast and in fact has cast a slur and a stigma on the image and reputation of the petitioner.

11. Section 9 of the Act, which deals with the powers, and functions of the Regional Joint Commissioner, which states as follows:

Subject to the administrative control of the Commissioner a Regional Joint Commissioner shall exercise such powers and perform such functions of the Commissioner as may, from time to time, be determined by the Government in respect of institutions and endowments in the region and any order passed or proceeding taken by a Regional Joint Commissioner in the exercise of such powers and the performance of such functions shall be deemed to be an order of the Commissioner for the purpose of this Act.

12. As can be seen from the above, the Regional Joint Commissioner derives competence and authority to exercise the powers and perform the functions of the Commissioner to the extent they are delegated by the Government from time to time and any order passed or proceedings taken by the Regional Joint Commissioner shall be deemed to be an order of the Commissioner.

13. The first respondent in her counter stated that the Government in G.O.Ms. No. 81, Revenue (Endts.-I) Department dated 25.01.1989, empowered the Regional Joint Commissioner to over see the work performed by the Deputy Commissioner and to attend to any general matter specified by the Commissioner from time to time.

14. Learned Counsel for the petitioner would submit that G.O.Ms. No. 81 dated 25.01.1989 does not confer any power or authority on the first respondent to pass any such order like the impugned one. A perusal of G.O.Ms. No. 81 would show that under the said G.O., the Government directed the Regional Joint Commissioner to exercise such powers and perform such functions of the Commissioner under certain sections of the Act, which were listed in the Annexure to the order. A scrutiny of various items mentioned in G.O.Ms. No. 81, would reveal that none of those items would confer any power on the first respondent-Regional Joint Commissioner to pass an order like impugned one. In fact, in the reference order also, it is rightly observed that the specific power in this regard had not been conferred by G.O.Ms. No. 81 dated 25.01.1989. The delegation of authority under G.O.Ms. No. 81 pertains to various other items in respect of Maths, which has no relevance or bearing over the subject matter in dispute in this writ petition. Even, the items mentioned under the caption "General" in the annexure also do not relate to the exercise of such power by the first respondent like the one exercised while passing the impugned order. In other words, G.O.Ms. No. 81, which was issued u/s 9 of the Act, conferring certain powers on the first respondent over certain matters, has no relevance to or bearing over the present issue. The first respondent cannot, therefore, seek to justify the impugned order by tracing the authority to G.O.Ms. No. 81.

15. The subsequent ratification by the Commissioner by order dated 18.09.2009 is also not of any help to the respondents, inasmuch as, a perusal of the said proceedings of the Commissioner would show that what has been ratified by the Commissioner was only the action of the first respondent in issuing deputation order to the Executive Officer and the Junior Assistant of the temple. The said proceedings dated 18.09.2009, however, referred to the report dated 18.08.2009 sent by the first respondent regarding the mismanagement of the temple and the public criticism thereof. The action of the first respondent in withholding the joint cheque power from the petitioner is not a matter of specific ratification by the Commissioner in his proceedings dated 18.09.2009.

16. The question, which then arises for consideration, is whether de hors G.O.Ms. No. 81 dated 25.01.1989, the first respondent in her capacity as the Regional Joint Commissioner, so competent to issue the impugned proceedings?

17. Section 12 of the Act deals with the powers of the Commissioner etc., to enter and inspect institutions and endowments, which states as follows:

Section 12(1): The Commissioner, the Additional Commissioner, a Regional Joint Commissioner, a Deputy Commissioner or an Assistant Commissioner having jurisdiction or any other person authorized by the Commissioner in this behalf, may with due regard to the religious practices and usages of the institutions, inspect any Charitable or Religious Institution or Endowment all moveable and Immovable property belonging to and all records, correspondence, plans, accounts and other documents relating to such institution or endowment for the purpose of satisfying himself that the provisions of this Act and the rules made thereunder are duly carried out:

18. From the above provision, it can be seen that not only the Commissioner and the Additional Commissioner, but a Regional Joint Commissioner, a Deputy Commissioner or an Assistant Commissioner having jurisdiction or any other person authorized by the Commissioner, may inspect any religious institution and also records, accounts and other documents relating to such institution. Thus, the power of inspection is specifically conferred on the Regional Joint Commissioner-first respondent by the statute. It is not disputed that the subject temple is within the jurisdiction of the first respondent. The impugned memo dated 18.08.2009 refers to the inspection of the subject temple by the first respondent on 05.08.2009. The impugned order dated 18.08.2009 was purportedly passed pursuant to the said inspection by way of taking necessary remedial measures to prevent the perceived misuse of the temple funds by abusing the joint cheque power, based on the complaints received in that regard. No exception can therefore be taken to the inspection of the subject temple by the first respondent, as the power to inspect is conferred by statute i.e., Section 12 of the Act. When during the course of such inspection, the first respondent has noticed any illegality or irregularity in any matter pertaining to the administration of the temple in general, and particularly, in the matter of financial management, the first respondent, as a superior authority in the

department, having jurisdiction over the temple, cannot be expected to shut the eyes to such irregularity or illegality and on the other hand, is duty bound to immediately take necessary remedial measures to prevent further mismanagement. The impugned order is in the nature of such a remedial measure.

19. Learned Counsel for the petitioner would contend that u/s 28 of the Act, it is only the authority competent to appoint a trustee that may suspend, remove or dismiss a trustee in the event of his being found to have indulged in various acts of omission or commission as set out therein and that too, authority competent shall frame a charge against the trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced against him and of adducing evidence in his favour; and then only pass an order. He would, therefore, contend that the first respondent, admittedly not being an authority competent to appoint a trustee, is therefore, not competent to pass the impugned order.

20. It is to be noted that it is not a case of suspension or removal or dismissal of a trustee. The impugned order merely has the effect of withdrawing the joint cheque power from the petitioner. The procedure prescribed u/s 28 of the Act is required to be followed by the authority competent to appoint the trustee only in the event of an order of suspension, removal or dismissal, being passed against the trustee. It is, therefore, not a case of first respondent usurping the powers u/s 28 of the Act, inasmuch as, no order of suspension or removal or dismissal is passed against the petitioner.

21. Learned Government Pleader, representing the respondents 1 and 2, would submit that the complaints received against the petitioner relating to the alleged fraud and misconduct are being enquired into and further necessary action would be initiated as per law after receipt of the report, as stated in the counter-affidavit. The question as to whether or not the procedure prescribed u/s 28 of the Act is followed would arise only in the event of initiating disciplinary action against the petitioner.

22. Learned Government Pleader further would contend that the petitioner, in fact had no legal right to exercise any power to operate the bank account and, therefore, he cannot complain of violation of any such right when joint cheque power is withdrawn from him. Section 29(5)(b)(iv) of the Act dealing with the duties of the Executive Officer, inter-alia, that "deposit all moneys received by the institution or endowment in such bank or treasury as may be prescribed and be entitled to sign all orders or cheques against such moneys". Thus, the power to operate the bank account and manage the finances either in the matter of deposit or withdrawal by way of cheque is specifically conferred on the Executive Officer u/s 29(5)(b)(iv) of the Act. No such power is admittedly conferred on the trustee under the provisions of the Act.

23. In Alhari Narayana Swamy Vs. Commissioner, Endowments Department, Tilak

Road, Hyderabad. and others, this Court held as follows:

The language employed in Sub-clause (iv)(b) of Sub-section (5) is quite clear, plain, unambiguous and it does not admit more than one meaning and it clearly mandates that the Executive Officer shall deposit the moneys received by the institution or endowment in the banks or treasury, as the case may be and he is entitled to sign all orders and cheques against such moneys.

24. It is no doubt true that the petitioner was jointly operating the bank account along with the Executive Officer and prior to the petitioner, his predecessor P. Narsing Rao ? 3rd respondent also operated the bank account jointly with the Executive Officer. Such an arrangement, which was in vogue previously, does not have any legal sanctity and the same was only in the nature of a privilege enjoyed by the petitioner. When once the said privilege is withdrawn, the petitioner cannot complain violation of any right, as the enjoyment of such privilege had no sanction of law. The petitioner has, therefore, no legal right vested in him to claim that he is entitled to operate bank account jointly with the Executive Officer and in the absence of such legal right, he cannot assail the impugned order on the ground of violation of such right.

25. Sri K.V. Subrahmanya Narusu, learned Counsel for the petitioner, would vehemently contend that the impugned order has the effect of casting a slur or stigma on the image and reputation of the petitioner and the principles of natural justice have been thrown to the windows, as no notice even was issued to the petitioner before passing the impugned order let alone an opportunity of being heard. As could be seen from the provisions of the Section 28 of the Act, issuance of notice and granting opportunity and framing of a charge and granting of opportunity of meeting such charge, and testing the evidence adduced against him and of adducing evidence in his favour, are all contemplated only when action is proposed to be taken for suspension, removal or dismissal of the trustee. Admittedly, in the present case, no such action is contemplated as yet because the enquiry in to the complaints received against the petitioner is stated to be pending and a decision as to the further course of action would be taken after receipt of the said report. The Act does not prescribe any procedure to be followed before issuing an order for withdrawal of the cheque power from the trustee, because, exercise of such power by the trustee is not contemplated by the Act at all. The fact that the petitioner or his predecessors happened to enjoy the privilege dehors the provisions of the Act, does not confer any vested right in them for its continuance. A practice, which has no sanction of law, cannot be sought to be perpetuated as a matter of right. When the petitioner has no legal right at all to operate the bank account and when the practice of joint operation of the bank account along with the Executive Officer, which is in the nature of privilege is withdrawn, particularly, in view of the complaints of abuse of such power and mismanagement of the temple funds, pending enquiry into the said allegations, the petitioner cannot be heard to complain that no notice was given to him before withdrawing joint cheque power. The apprehension of the petitioner

that such withdrawal of joint cheque power may entail in lowering of his image or reputation in the eyes of the public is of no consequence.

26. Learned Counsel for the petitioner would rely upon the decision in *Mangilal Vs. State of Madhya Pradesh*, wherein, the Apex Court held as follows:

Even if a statute is silent and there are no positive words in the Act or Rules made thereunder there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected, by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every Tribunal/Court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on principles of natural justice irrespective of the extent of its application by express provision in that regard in given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. See *Swadesi Cotton Mills etc. etc. v. Union of India etc. etc.* AIR 1961 SC 818. Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are; notice of the case to be met, and opportunity to explain.

27. In the above decision, it is held that where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The compliance with the principles of natural justice is specifically provided in the statute i.e., u/s 28 of the Act, but they do come into play only when disciplinary action is proposed to be taken against the petitioner. In the present case no disciplinary action as yet is proposed against the petitioner. What all impugned order purports to achieve is to withdraw the joint cheque power from the petitioner. The petitioner having no legal right vested in him or conferred on him by law to have such joint cheque power, cannot complain that withdrawal of the same considerably affected his image. The principles laid down in the above decision are not disputed, but they do not have bearing to the factual situation obtaining in the present case.

28. Learned Counsel for the petitioner relied on the following decisions i.e., in

Canara Bank and Others Vs. Shri Debasis Das and Others, , Gurmej Singh Vs. State of Punjab and Another, and Uma Nath Pandey and Ors. v. State of U.P. 2009 (1) DT 179 SC regarding the principles of natural justice, wherein the Apex Court held as follows:

Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order, which involves civil consequences, must be consistent with the rules of natural justice. Expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

29. The proposition that even the administrative order must be consistent with the principles of natural justice when it involves civil consequences is not disputed. There is nothing on record to show that the impugned order is visited with such civil consequences as those mentioned in the above decision. The allegation that the impugned order would have the effect of lowering the image and reputation of the petitioner in the eyes of public is based on the assumption and apprehension of the petitioner. The above decision Canara Bank and Others Vs. Shri Debasis Das and Others, relates to dismissal of the employee of the bank after regular departmental enquiry into specific charges framed against him and violation of principles of natural justice was complained of in passing the order of dismissal. The decision cited above is not applicable to the facts of the of the present case, where no disciplinary action is contemplated against the petitioner so far and the impugned order only seeks to remedy the situation by putting an end to an irregular practice in vogue.

30. In the circumstances, the contention of the learned Counsel for the petitioner that the impugned order affected the civil rights of the petitioner and that the same is vitiated due to non-compliance with the principles of natural justice is held to be untenable. The impugned order does not suffer from any illegality. On the other hand, the petitioner is not entitled to assail the impugned order, as no legal right is vested in or conferred on the petitioner to operate the bank account jointly along with the Executive Officer.

31. In view of the above discussion, on point No. 1 in the reference order, it is held that the order under challenge is only an order simply withdrawing a mere privilege relating to which, there is no enforceable legal right to the petitioner and the same cannot be taken as one attaching stigma to the writ petitioner. On point No. 2, it is held that the question of application of principles of natural

justice while passing the impugned order does not arise and hence, the petitioner cannot complain that there has been violation thereof. On point No. 3, it is held that the first respondent has no authority to pass impugned order in the light of G.O.Ms. No. 81 dated 25.01.1989, nevertheless, the first respondent has authority and jurisdiction to make such an order in the light of the provisions of the Act, particularly, Section 12 of the Act. On point No. 4, it is held that the question of ratification of the impugned order does not arise and the order of ratification passed by the Commissioner relates to some other aspect but not the impugned action of the first respondent. On point No. 5, it is held that the Executive Officer alone is competent authority to operate and maintain the bank account of the temple in view of Section 29(5)(b)(iv) of the Act and the petitioner, who is the founder-trustee cannot claim that he is entitled to operate the bank account jointly along with the Executive Officer and especially in the light of serious allegations made against the petitioner.

32. In the result, the writ petition is dismissed. There shall be no order as to costs.