

(1993) 01 KAR CK 0021
In the Karnataka High Court
Case No : W.A. No. 2068 of 1992

K.V. Sridhar Adiga

APPELLANT

Vs

Commissioner for Religious and Charitable Endowments

RESPONDENT

Date of Decision : 18-01-1993

Acts Referred:

Madras Hindu Religious and Charitable Endowments Act, 1951 — Section 103, 3, 49

Citation : (1993) ILR (Kar) 554 : (1993) 1 KarLJ 493

Hon'ble Judges : K.A. Swami, Acting C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : Padubidri Raghavendra Rao, for the Appellant; S.R. Nayak, Government Advocate for R-1 to R-3, S. Vijayashankar and A.S. Vishwanatha, for R-4, for the Respondent

Final Decision : Partly Allowed

Judgement

K.A. Swami, Ag. C.J.

1. At the stage of admission, all the respondents except respondent-5 are served. Notice to respondent-5 is dispensed with as he is not a necessary party to the proceedings. As the Appeal lies in a narrow compass, it is admitted and heard for final disposal.

2. This Appeal is preferred against the order dated 8.10.1992 passed by the learned Single Judge in W.P.No.23890 of 1992.

2.1. The appellant was the petitioner in the Writ Petition. He sought for quashing the order dated 1.8.1992 passed by the Commissioner for Religious and Charitable Endowments in Karnataka, respondent-1, bearing No.Rev.PTN.5/92-93 produced as Annexure-H in the Writ Petition.

2.2. The learned Single Judge has held that as the enquiry is pending, no interference is called for. Hence the petitioner in the Writ Petition has come up in this appeal.

3. It is contended by Sri Padubidri Raghavendra Rao, learned Counsel for the appellant that the first respondent (Commissioner for Religious and Charitable Endowments) acted without the authority of law in entertaining a revision petition against the proposal dated 9.6.1992 made by the Executive Officer of the Temple (Mookambika Temple, Kollur) to place respondent-4 under suspension pending enquiry into the charges framed against him; that as there are no Trustees of the temple, the Administrator is exercising the powers of the Trustees; therefore, the Administrator by the order dated 22.6.1992 has confirmed the action taken by the Executive Officer on 9.6.1992; that the order dated 22.6.1992 passed by the Administrator has not been challenged, therefore, the order of the Commissioner is illegal and beyond his jurisdiction and as such it requires to be quashed; that it is the Executive Officer who has got the disciplinary control over the staff of the Temple, that as the Archaks are the members of the staff of the Temple, the Executive Officer is competent to place the Archaks under suspension; that even if it is considered that it is the Administrator who has the power to hold an enquiry and place the Archaks under suspension pending enquiry, as the Administrator has approved the action taken by the Executive Officer, the order of suspension must be held to be in force atleast from 22.6.1992.

4. On the contrary, it is contended by Sri S. Vijayashankar, learned Senior Counsel appearing for respondent-4 that u/s 49 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter called as the "Act"), read with Rule 3 of the Rules framed u/s 49 of the Act, it is the Trustees or in their absence the Administrator alone is competent to initiate disciplinary proceedings and place the person against whom charge is framed under suspension pending enquiry and not the Executive Officer. It is contended that Para 28-A of the Scheme has to be read in the light of the provisions contained in Section 49 of the Act and Rule 3 of the Rules; that a Division Bench of this Court in K. Murthy Ganeshabhat v. Sri Mookambika Devaru, Kollur and Ors., W.A.No.2400/90 decided on 6.12.1990, has interpreted Para 28-A of the Scheme in the same manner as contended by him.

5. In order to determine these rival contentions, the facts necessary are no more in dispute. An Administrator has been appointed to the Temple in question. He is entitled to exercise the powers of the Trustees. Respondent-4 is one of the Archaks of the Temple. On 9.6.1992, the Executive Officer of the Temple passed an order as per Annexure-F produced in the Writ Petition. Under that order, he framed certain charges against respondent-4 and also placed him under suspension pending enquiry. Pursuant to the order dated 9.6.1992 passed by the Executive Officer, respondent-4 was kept under suspension. The Executive Officer reported the matter to the Administrator, who by the order dated 22.6.1992 approved the action taken by the Executive Officer. The said order is produced as Annexure-G in the Writ petition. It reads thus -

Before the order dated 22.6.1992 was passed, respondent-4 had invoked the

jurisdiction of the Commissioner for Religious and Charitable Endowments in Karnataka u/s 18 of the Act on 10.6.1992 challenging the order dated 9.6.1992 passed by the Executive Officer. The Commissioner stayed the operation of the order on 11.6.1992, These facts are not in dispute.

6. Section 49 of the Act reads thus:

"49. (1) All office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee; and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.

(2) Any office-holder or servant punished by a trustee under Sub-section (1) may, within one month from the date of the receipt of the order by him, appeal against the order to the Deputy Commissioner.

(3) A hereditary office-holder or servant may, within one month from the date of the receipt by him of the order of the Deputy Commissioner under Sub-section (2), prefer an appeal to the Commissioner against such order."

Rule 3 of the Rules framed u/s 49 of the Act reads thus:

"3. Pending the disposal of the grave charge or charges against the office-holder or servant, the trustee may place him under suspension when such suspension is necessary in the interest of public service."

Para 28-A of the Scheme is as follows:

"The Executive Officer shall have the disciplinary control over the temple servants. His order in this regard shall be subject to confirmation of the trustees."

It may be relevant to notice that the Scheme in question was framed when 1926 Act was in force. It came to be repealed by 1951 Act. Section 49 of the Act does not empower the Executive Officer to place a servant or an office-holder of the Temple under suspension or to hold disciplinary proceedings against him. No doubt Para 28-A of the Scheme as reproduced above empowered the Executive Officer to take disciplinary action. The Scheme cannot be contrary to the provisions of the Act and the Rules framed thereunder. Therefore the Scheme has to be read in conformity with the Rules. It is because of this, a Division Bench of this Court in W.A.No.2400/90 D.D. 6.12.1990 has held as follows:

"2. The learned counsel for the appellant invited our attention to paragraph 28-A of the Scheme framed under the Madras Hindu Religious and Charitable Endowments Act, 1926 which continues to be in force and submitted, according to that provision, the power to place an employee of the Temple under suspension is vested in the Executive Officer though the order of suspension was subject to confirmation by the Trustees. He submitted that unless the Executive Officer passes an order of suspension, there will be nothing for the Trustee to

confirm. Therefore he submitted, the Trustees could not pass an original order of suspension though they had the power to confirm such order.

3. Sri A.S. Viswanath, learned counsel for respondent-2, however, invited our attention to Section 49 of the Madras Hindu Religious and Charitable Endowments Act, 1951 which repealed the 1926 Act under which the power to suspend an employee is expressly vested in the Trustees. Section 103 of the 1951 Act expressly provided that any Scheme framed under the repealed enactment would continue to be in force under the new Act to the extent that it is not inconsistent with the provisions of the 1951 Act. Therefore, it is clear that paragraph 28A of the Scheme framed under the 1926 Act has to be read subject to the provisions of Section 49 of the 1951 Act. Therefore, we are of the view that the Trustee had the power to place the appellant under suspension."

We are in agreement with the interpretation placed on Section 49(1) and (3) of the Act and Rule 3 of the Rules framed thereunder and Para-28-A of the Scheme of the temple in question in the aforesaid Decision.

6. Consequently it follows that the Executive Officer could not have placed respondent-4 under suspension. If he was of the view that the conduct of respondent-4 amounted to misconduct, it was open to him to report the matter to the Administrator who was required to take action on the basis of the report made by the Executive Officer. On the contrary, the Executive Officer has framed the charges and placed respondent-4 under suspension as per his order Annexure-F produced in the Writ Petition which discloses that the said order has been given effect to, and respondent-4 is placed, under suspension. Therefore, it is not possible to agree with the contention of Sri Padubidri Raghavendra Rao, learned Counsel appearing for the appellant that the order Annexure-F passed by the Executive Officer on 9.6.1992 was merely a proposal. It is one thing to treat that order as a proposal and it is quite another thing to find out as to its effect and how it has been understood and whether it has been given effect to as an order. Therefore, the Commissioner was entitled to entertain a revision petition. When in the revision petition the Commissioner had stayed the order on 11.6.1992 itself, the Administrator should not have proceeded with the matter to approve the action of the Executive Officer on 22.6.1992; In the absence of any proceeding before the Commissioner and an interim order passed by him, it was open to the Administrator to treat the order passed by the Executive Officer as a proposal. He could not have done so in the instant case on 22.6.1992 because that order was stayed by the Commissioner on 11.6.1992.

7. However, the Commissioner did not take into consideration the effect of Section 49 and 103 of the Act and Rule 3 of the Rules framed thereunder and also the Decision of the Division Bench of this Court in W.A.No.2400/1990 referred to above and the manner in which Para 28A of the Scheme has to be construed. If only he had taken into consideration all these aspects, he would not have set aside the entire proceedings because it is open to the Executive Officer to report the misconduct of any member of the staff and request the

Administrator or trustees to take action in accordance with law. If the Executive Officer, who will be on the spot and who will be supervising the activities in the temple and the services rendered by each member of the staff and employees of the temple, is held to have no power even to make a report about the conduct of the staff, he would be a silent spectator without any power and his presence will not be effective at all. No staff member will obey his orders. In that event there will be no Administration in the temple. Therefore Para 28-A of the Scheme has to be construed in the light of the provisions contained in Sections 49 and 103 of the Act read with Rule 3 of the Rules. Consequently it follows that the Executive Officer has the authority to supervise the day-to-day affairs and activities, performance of the pooja in the temple and also exercise effective administrative control over the members of the staff and ensure that Pooja and all other ceremonies, functions and the activities in the temple are performed and carried on as expected. If any member of the staff including an Archak commits misconduct, then it is open to the Executive Officer to make an appropriate report along with the draft "charges to the Administrator or to the Trustees as the case may be. The Administrator or the Trustees as the case may be, is/are required to consider whether a disciplinary action should be taken against such staff member including an Archak and the charges as proposed by the Executive Officer should be framed. He (the Administrator/Trustee) has also to take further decision in the matter as to whether in the facts and circumstances of the case, the concerned staff member deserves to be placed under suspension. The Commissioner ought to have gone through the charges framed by the Executive Officer, treated the same as a proposal and considered whether in the light of the facts contained in Annexure-F, the charges deserved to be enquired into and the Archak was required to be placed under suspension pending enquiry into the charges. The Commissioner in the interest of the better administration of the temple and maintaining discipline among the staff and the Archaks and to enable the Executive Officer to effectively exercise the power of supervision and control over the staff and the Archaks and carry on the administration of the Temple effectively and efficiently should have remitted the proceeding to the Administrator with a direction to treat the order of the Executive Officer as a proposal and consider it afresh.

8. Under these circumstances, we are of the view that the learned Single Judge has not noticed this aspect of the matter.

9. For the reasons stated above, the Writ Appeal, is allowed in part, the Order dated 8.10.1992 passed by the learned Single Judge in W.P.No. 23890/92 is set aside, the Writ Petition is allowed in part, the order dated 1.8.1992 passed by the Commissioner for Religious and Charitable Endowments is set aside and the order dated 22.6.1992 passed by the Administrator produced as Annexure-G in the Writ Petition is quashed. It is further directed that the order dated 9.6.1992 passed by the Executive Officer shall be treated only as a proposal submitted to the Administrator, who shall take a decision on it afresh independently in the facts and circumstances of the case and in the light of the observations made in

this order, We make it clear that until an order is passed by the Administrator, the order dated 9.6.1992 will not have the effect and it will be only a proposal. Consequently, respondent-4 is entitled to function until an appropriate order is passed by the Administrator.