

(1993) 03 KAR CK 0031
In the Karnataka High Court
Case No : W.A. No. 2412 of 1992

Lakshminarayana Asranna

APPELLANT

Vs

Dr. K. Gananatha Shetty

RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Madras Hindu Religious and Charitable Endowments Act, 1951 — Section 45, 45 (3)

Citation : (1993) ILR (Kar) 1328 : (1993) 2 KarLJ 112

Hon'ble Judges : K.A. Swami, Acting C.J.; A.J. Sadashiva, J

Bench : Division Bench

Advocate : Padubidri Raghavendra Rao, for the Appellant; P. Vishwanatha Shetty, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

K. A. Swami, Ag. C.J

1. This Appeal is preferred as against the order dated 4th November 1992 passed by the learned Single Judge in Writ Petition No. 17435 of 1992. The first respondent in this appeal was the petitioner in the Writ Petition. He sought for quashing the order dated 7.6.1992 passed by the Commissioner for Religious and Charitable Endowments, Bangalore in No. ADM 8 MSC CR MOKKAM 5:92-93 placing him under suspension in exercise of powers u/s 45 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as "the Act") and appointing the Assistant Commissioner for Hindu Religious & Charitable Endowments, Mangalore, as the Administrator of the Temple.

2. Learned Single Judge has allowed the Writ Petition on the ground that the Commissioner has acted arbitrarily in placing the first respondent under suspension. Sri Padubidri Raghavendra Rao, learned Counsel appearing for the appellant submits that the order dated 7.6.1992 - Annexure A to the Writ Petition - gives all the details of the misconduct committed by the petitioner in the Writ Petition, and, on that basis, the Commissioner was entitled to place him under

suspension pending enquiry. It is also submitted that the order also contains the charges framed against the first respondent - petitioner in the Writ Petition, therefore as per Section 45 of the Act the Commissioner was well within his power in placing the first respondent under suspension and hence the said order ought not to have been interfered with. Section 45(3) of the Act reads thus:

"Pending the disposal of the charges framed against the trustee, the Commissioner or the Deputy Commissioner may place the trustee under suspension and appoint a fit person to discharge the functions of the trustee."

From the aforesaid provision it is clear that the Commissioner or the Deputy Commissioner may place a trustee under suspension and appoint a fit person to discharge the functions of the trustee only after the charges are framed and pending disposal of the charges framed. In the instant case, it is submitted that there are charges framed. Annexure-A cannot be held to contain charges. It only contains the contents of the report made by the Assistant Commissioner for Hindu Religious and Charitable Endowments, Mangalore. There are no separate charges framed by the Commissioner on the basis of the materials placed before him. The object of sub-section (3) of Section 45 of the Act is to ensure that no trustee is placed under suspension arbitrarily and without making out a specific case and this object is sought to be achieved by specifically providing that a trustee can be placed under suspension pending the disposal of the charges framed. This means the power to place a trustee under the suspension can be exercised only after the charges are framed. Therefore, without framing the charges, the Commissioner could not have placed the respondent under suspension in exercise of his power u/s 45(3) of the Act. Hence, we are of the view that the order passed by the Commissioner placing the first respondent under suspension without framing the charges is contrary to law.

3. It is in these circumstances, the learned single Judge has characterised the order as the one passed arbitrarily. Hence, we see no ground to interfere with the same.

4. Accordingly the Appeal is dismissed. However, it is made clear that if there is a case for framing charges, it is open to the 2nd Respondent to frame the charges and proceed in the matter in accordance with law and in the light of the observations made in this order.