

(2009) 12 KAR CK 0029

In the Karnataka High Court

Case No : Review Petition No. 1513 of 2009 in Writ Appeal No. 169 of 2007

Malthesh Gudda Pooja

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 92
Karnataka High Court Rules, 1959 — Rule 5

Citation : (2009) 12 KAR CK 0029

Hon'ble Judges : Ravi Mali Math, J; K. Sreedhar Rao, J

Bench : Division Bench

Advocate : V.P. Kulkarni, for the Appellant; C.S. Patil, Addl. Govt. Advocate for R. 2 and Sri. S.N. Pralayakalmath, Advocate for R. 3, for the Respondent

Final Decision : Allowed

Judgement

1. The counsel for the 3rd Respondent has filed an application u/s 151 CPC to the effect that the writ appeal was disposed of by the Division Bench consisting of Justice V. Gopala Gowda and Justice L. Narayana Swamy, hence the review petition should be heard and decided by the same Bench. The notification dated 29.12.2008 issued by Chief Justice permits the review petitions to be heard by the Bench other than that which passed the order is contrary to the provisions of Rule 5 of the Karnataka High Court Rules. The text of the notification and the relevant provisions of the above rules are extracted for convenient reference:

Rule 5 of the Karnataka High Court Rules, 1959 reads thus:

5. Every petition or application for review, reconsideration or correction of a judgement, decree, order or sentence shall be posted before the original Bench which pronounced, made or passed such judgement, decree, order or sentence or if the Judge or any of the Judges who constituted the said Bench is not available by reason of death, retirement or absence, before any other Bench constituted in the same manner as the original Bench.

2. In the light of the above rule, it is sought to be argued that the Circular issued by the Hon''ble Chief Justice is incorrect and contrary to the rule. It is strenuously contended that the review petitions have to be heard by the Bench which passed the order and not by the other Bench.

3. Rule 5 is not a rigid mandate. The exception to the rule is provided in the rule itself. In the case of death or non-availability of the judge, the review petition is permitted to be heard by the Bench other than the one, which passed the order. The experience has shown that for correcting trivial mistakes in the judgment, the review jurisdiction is invoked by the parties. In the scheme of sitting arrangement for the Circuit Benches, it is difficult to obtain the same combination to hear the review within a reasonable time. Therefore, in order to obviate the hardship to the litigants, the above notification is issued. Even on merits when a judgment or an order is to be reviewed, the similar difficulty of non-availability of the Bench, which passed the order within a reasonable time, is very much felt.

4. The exercise of power of allotment of subjects and cases is the prerogative of the Hon''ble Chief Justice. The Supreme Court in the State of Rajasthan Vs. Prakash Chand and Others, has made the following observations in paragraph 20 relying upon the earlier judgment of the Supreme Court reported in State of Maharashtra Vs. Narayan Shamrao Puranik and Others, :

20. In State of Maharashtra Vs. Narayan Shamrao Puranik and Others, , referring to the power of the Chief Justice to make roster, this Court opined (at p. 1200):

The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in Sub-section (3) of Section 51 of the Act, but inheres in him in the very nature of things.

5. Keeping in view the practical considerations the above notification is issued. Therefore the notification cannot be termed as arbitrary and illegal.

6. The Government ordered appointment of an Administrator to the Sri Malthesh Devaragudda temple and also directed an inquiry into the alleged irregularities committed by the trustees. The Petitioner challenged the said order in W.P. No. 16158 of 2006 contending that the government has no jurisdiction over the temple in question and that. Section 23 of the Karnataka Hindu Religious and Charitable Endowments Act. 1997 (For short Act of 1997) has no application. Besides the Petitioner had challenged the constitutional validity of the said Act in W.P. No. 8124 of 2005. The Division Bench of this Court had struck down the constitutional validity of the Act in W.A. No. 3905/2005 and other connected matters. The Government has filed special leave before the Supreme Court. The judgment of the Division Bench is challenged before the Supreme Court, the special leave is granted. The matter is pending adjudication.

7. The learned Single Judge held that appointment of an Administrator is bad in

law. Hence the order to that extent is set aside. However, the liberty is given to the Government to conduct an inquiry into the conduct of the Managing Committee regarding the alleged irregularities. The Petitioner aggrieved by the latter portion of the order regarding the inquiry by the government has filed the writ appeal in question. The writ appeal is dismissed for the following reasons:

(i) That the Petitioners have not challenged the notification issued u/s 23 of the Act in respect of the temple in question.

(ii) The term of the Managing Committee is expired. Therefore, it is not necessary to entertain the writ appeal.

8. The Appellant has filed this review petition on the ground that in the writ appeal the Bench has not considered and addressed itself to the questions and issue raised in the appeal. The reasons given by the Court for dismissing the writ appeal is contrary to the facts borne on record, hence seek review.

9. With reference to reason No. 1 noted in para-5. it is submitted that the Petitioner has challenged the constitutional validity of the entire Act of 1997. When the validity of the entire Act is in challenge, the need to challenge specifically the validity of Section 23 is unnecessary, since the validity of Section 23 would also be an issue for consideration before the Supreme Court.

10. The temple in question is under the administration of the District Judge, Dharwad by virtue of the scheme suit filed u/s 92 of Code of Civil Procedure. The District Judge, Dharwad is the administrative head and the controlling authority of the temple affairs. The District Judge under the scheme has to appoint the trustees for a period of five years. In the instant case, the tenure of the appointed committee even after the expiry of the term is directed to be continued by the order of the District Judge, Dharwad dated 11.4.2009 until new committee is appointed. Therefore, the second reason given for the dismissal of the writ appeal that the term of the committee is expired is factually incorrect, since the tenure of the committee is extended until the new committee is appointed. It appears that the correct and proper material on record perhaps was not brought to the notice of the Bench when the appeal was heard.

11. The temple in question is registered under the Bombay Public Trusts Act (for short BPT Act). With the advent of Act. 1997, the BPT Act is repealed. The Government u/s 23 is empowered to issue notification for taking over management of the temples, which are registered under the B.P.T. Act and receiving annual grants from the Government. The stay granted by the Supreme Court against the operation of the judgment in W.A. No. 3905/2005 is limited only to the extent pertaining to appointment and transfer of Arches. Therefore, there is no stay with regard to Section 23 of the Act. The validity of Section 23 of the Act even if upheld by the Supreme Court, still the jurisdiction of the government and applicability of Section 23 to the temple in question is the crux of the issue to be decided in the writ appeal with reference to the factual material. The reasons whatever stated for the dismissal of the appeal is based on

incorrect fact, situation. The crux of the issue raised in the writ appeal has remained untouched in the order under review. The jurisdiction of the government to inquire into the affairs of the managing committee will arise only when section 23 of the Act 1997 becomes applicable to the temple in question, otherwise the government will have no jurisdiction to conduct enquiry. The District Judge, Dharwad shall only be the competent authority to inquire into the conduct and actions of the managing committee.

12. With regard to the alleged irregularities, this Court had directed the District Judge to conduct enquiry and submit a report. The District Judge by his report dated 29.11.2008 after thorough enquiry has submitted a report that the allegations made against the Managing Committee is baseless, the transactions made by the Managing Committee is perfectly in accordance with law.

For the reasons and discussions made above, the review petition is allowed. The appeal to be heard afresh for disposal in accordance with law.