

(2010) 04 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 484 of 2007 connected with Writ Petition No. 2140 of 2008

N. Srinivasan and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Karnataka Hindu Religious and Charitable Endowments Rules, 2002 — Rule 12
Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 —
Section 16, 2 (2), 9

Citation : (2011) 2 KarLJ 41 : (2011) 1 KCCR 103

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : J. Prashanth and S. Prafulla Chandra, in Writ Petition No. 484 of 2007 and Arvind Kamath, AIMT Legal in Writ Petition No. 2140 of 2008, for the Appellant; N.B. Vishwanath, A.G.A. for Respondents 1 to 4, T.N. Raghupathy, for Respondents 5 and 6 in Writ Petition No. 484 of 2007 and N.B. Vishwanath, A.G.A. for Respondents 1 to 4, T.N. Raghupathy and Jaishree for Caveator Respondent 5 in Writ Petition No. 2140 of 2008, for the Respondent

Judgement

Mohan Shantanagoudar, J.—Petitioners are questioning the order of appointment of Sri N. Shashishekar Dixit (hereinafter called as "contesting Respondent"), dated 6.5.2006 as "Agamika" of Sri Chamundeswari Temple, Chamundi Hills, Mysore. They have also sought for quashing the Official Memorandum 29.10.2007 issued by the second Respondent whereby the appointment of the contesting Respondent is modified by declaring that he is appointed as Agamika-cum-Archaka of the said temple. Petitioner in WP. No. 2140/2008 is serving as Jois, whereas Petitioners in WP. No. 484/ 2007 are serving as Sannidhi Paricharakas. The contesting Respondent is arrayed as Respondent No. 5 and Respondent No. 6 in WP. No. 2140/2008 and WP. No. 484/2007 respectively.

Heard the learned Advocates and perused the records including the records produced by the Executive Officer.

2. Sri Chamundeswari Temple, Chamundi Hills, Mysore, is a Muzrai Institution as notified by the Mysore Hindu Religious Institutions and Charitable Endowments Act, 1927 (for short hereinafter referred to as the "Act of 1927") and continues to be recognized so under the Karnataka Hindu Religious and Charitable Endowments Act, 1997 (for short hereinafter referred to as the "Act of 1997"). In the temple, there are different categories of temple servants, who provide services, including Agamika, Archaka, Jois, Sannidhi Paricharaka, etc. Each servant of the temple has been assigned certain roles as per Annexure-W (in WP. No. 484/2007). According to the Petitioners, each category of the temple servants will have to perform definite role entrusted to such servants, except for certain extraordinary circumstances. In other words, the Petitioners contend that generally there will not be overlapping of duties between the different categories of servants. But in extraordinary circumstances such duties overlap.

3. The main grievance of the Petitioners is that the appointment of the contesting Respondent as "Agamika" subsequently as Agamika-cum-Archaka is illegal, inasmuch as such appointment is made without following due procedure laid down under the provisions of the Act of 1997 and the Karnataka Hindu Religious and Charitable Endowments Rules, 2002 (for short hereinafter referred to as the "Rules").

4. Learned Counsel appearing on behalf of the Petitioners contended:

a) that the contesting Respondent is not appointed on the basis of the qualification prescribed, but was appointed as Agamika wrongly treating the post as hereditary post. Rule 12 of the Rules, prescribes the qualification for appointment of Agamika and since the contesting Respondent did not have requisite qualification as prescribed Under Rule 12 of the Rules, the appointment is bad in the eye of law. In other words, learned Counsel appearing on behalf of the Petitioners submits that Rules do not contemplate hereditary appointments (without requisite qualification);

b) that Section 34 of the Act of 1927 provides that no officer or servant in a Muzrai Institution shall be deemed to descend by heredity rights unless it has been conferred or recognized originally with an express stipulation to that effect in writing by a Competent Authority or has been held successively by three generations of the same family in succession in the due legal Course and therefore, the appointment of the contesting Respondent is bad in the eye of law inasmuch as the three generations of the contesting Respondent did not hold the post of Agamika in due legal course;

c) that the educational certificate produced at Annexure-H (in WP. No. 2140/2008), which discloses that the contesting Respondent has passed Praveena Examination, is suspicious in nature and therefore the same cannot be relied upon;

Learned Counsel appearing on behalf of the Petitioners relying upon the documents at Annexures-E, E1, F, G, J and K (in WP. No. 2140/2008) submits

that the factum of contesting Respondent obtaining Praveena Degree is highly doubtful.

d) that the subsequent designation of the contesting Respondent as Agamika-cum-Archaka is contrary to the Scheme of the Act of 1997.

Per contra it is contended on behalf of the contesting Respondent that the Petitioners do not have locus standi to file the writ petitions as they are neither Agamikas nor Archakas working in Sri Chamundeswari Temple. Petitioner in WP. No. 2140/2008 is Jois and the Petitioners in WP. No. 484/ 2007 are Sannidhi Paricharakas. Hence, according to the contesting Respondent, Petitioners have no locus standi to question the appointment of the contesting Respondent as Agamika-cum-Archaka.

It is further submitted by him that the contesting Respondent has passed Praveena Examination in the year 1991-92 itself and however, the Degree Certificate is issued in the year 1994 as the Convocation was held only on 24.10.1994 in respect of these Degrees. He relied upon the documents produced along with the statement of objections in support of his contention that the Principal of the Institution, wherein the contesting Respondent has studied, has clarified subsequently that the contesting Respondent has completed Praveena Examination in the year 1991-92 and that he got the Degree Certificate in the year 1994. It is further submitted that the contesting Respondent was appointed in place of his father viz., Nagendra Dixit as Agamika as per Annexure-R8 (in WP. No. 2140/2008), and since then he is continued as Agamika. He further relies upon the document at Annexure-R2 (in WP. No. 2140/2008), to contend that the great grandfather of contesting Respondent viz., Ekambar Dixit was not only doing the job of Agamika, but also of Archaka and that his successors also have performed the work of Archaka along with the work of Agamika. On these among other grounds, it was argued on behalf of the contesting Respondent, for dismissal of the writ petitions.

5. The Act of 1997 came into force with effect from the year 2001. Number of writ petitions were filed questioning the validity of the said Act before this Court, including WP. No. 36801/2003. In writ petition No. 36801/ 2003 and certain other writ petitions, interim stay of the operation of certain provisions of the Act of 1997, including Sections 9 to 16 of the Act of 1997, was granted by this Court. Such interim order was continued till the disposal of the writ petitions. The writ petitions came to be dismissed by the learned Single Judge on 9.9.2005. Certain of the Petitioners again filed writ appeals before the Division Bench, including WA. No. 3532/2005. In writ appeal No. 3532/2005 and certain other writ appeals, interim order relating to Sections 9 to 16 of 1997 Act continued to operate. The writ appeals were allowed on 14.7.2006.

6. From the above, it is clear that during the pendency of the writ petitions and the writ appeals, certain provisions of the Act of 1997, including Sections 9 to 16 of the Act of 1997 (Chapter-III of the Act), and the Rules framed thereunder

including Chapter-IV of Rules were not operational. Consequently, the provisions of the Act of 1927 were holding the field. Thus, the appointments should have been made in accordance with the Act of 1927. Section 34 of the Act of 1927 reads thus:

Section 34: No Temple Officer or Servants in a Muzrai Institution to be hereditary except under certain circumstances.-- No officer or servant in a Muzrai Institution shall be deemed to descend by hereditary rights unless it has been conferred or recognized originally with an express stipulation to that effect in writing by a Competent Authority or has been held successively by three generation of the same family in succession in the due legal Course.

From the aforementioned provision it is clear that the Officer or Servant in the Muzrai Institution could descend by hereditary right if the same has been successively held by three generations of the same family in succession in legal course. In this context, Sri Aravind Kamat, learned Counsel appearing for the Petitioners submits that three successive generations of the contesting Respondent did not hold the post of Agamika in legal course; that the appointment of father of the contesting Respondent was subject to approval of the department and therefore it was not a permanent appointment and consequently the contesting Respondent could not have been appointed.

7. Annexure-R5 produced by the contesting Respondent along with the statement of objections in WP. No. 484/2007 is an Inamdar Barbard Register. The same is of the year 1911. The said document pertains to Sri Chamundeswari Temple. At Sl. No. 8 of the said document, it is clearly mentioned that Sri Ekambar Dixit is appointed as Agamika and he will perform the work of Archaka also Said Ekambar Dixit is the great grand rather of the contesting Respondent. Thus, it is clear that from the ancient records that the great grandfather of the contesting Respondent was appointed in the year 1911 as Agamika and he was entrusted with the duty of the Archaka also. Annexure-R6 is the document pertaining to the pay bill for the month of April 1975 in respect of Sri Chamundeswari and other Temple Estabhshments. The said document Shows that Narayan Dixit was appointed as Agamika and he was pad the pay of Rs. 15/- and the allowance of Rs 2/- per month Narayan Dixit is the son of Ekambar Dixit. In other words, Narayan Dixit is the grandfather of contesting Respondent. He died on 24-10-1989. Nagendra Dixit is the son of Narayan Dixit. Annexure-R9 is the Degree Certificate issued in the name of Nagendra Dixit to show that the said Nagendra Dixit had passed Agamika Praveena Examination in II Class in the year 1970. It is needless to observe that Nagendra Dixit is the father of the contesting Respondent. The appointment of Nagendra Dixit was in the place of his father Narayan Dixit as per Annexure-B, (In WP. No. 2140/2008), dated 22.1.1990. The said appointment order reveals that the appointment of Nagendra Dixit is w.e.f. 1.1.1990 on the pay scale of Rs. 300A to Rs. 450/-. It is also mentioned therein that the appointment is made subject to approval of the Managing Committee.

8. The records maintained by the Chief Executive Officer (produced by the

learned Government Advocate during the course of arguments) of Sri Chamundeswari Temple at page No. 10 reveal that the certificate was issued as far back as on 18.11.1988 by the Executive Officer of Sri Chamundeswari Temple to the effect that Sri Narayan Dixit has been functioning as Archaka and Agamika since 45 years, without any black spot or stigma.

The document at Page No. 8 in the said records reveals that Narayan Dixit has written letter to the Executive Officer of Sri Chamundeswari Temple on 9.8.1988 that his son, viz., Nagendra Dixit may be permitted "to work along with him since he has obtained Degree in Agama Shastra. In the very letter Nagendra Dixit has endorsed that he has been performing his duties along with Narayan Dixit since 8 years and that he will continue to do the same work even thereafter....

From the above, it is clear that even prior to 1988, Nagendra Dixit, father of the contesting Respondent was performing the duties of Agamika as well as Archaka along with his father Narayan Dixit.

The document at Page No. 6 of the said records, dated 16.2.1999 is the memo issued to Nagendra Dixit by the Executive Officer. In the said memo it is specifically mentioned that Nagendra Dixit is performing the duties of Agamika as well as Archaka.

9. Learned Counsel appearing for the Petitioners relying upon certain wordings found in Annexure-B, submits that the appointment of father of the contesting Respondent was not full-fledged appointment, but was subject to approval of the Managing Committee and that as there is nothing on record to show that the approval was subsequently granted for the appointment of father of the contesting Respondent by the Managing Committee, same cannot be said to legal.

The said submission cannot be accepted, inasmuch as the provisions of the Act of 1927 do not anywhere reveal that the appointment can be made temporarily or permanent or subject to approval of the Managing Committee. Moreover, there is nothing on record to show that the approval of Managing Committee was not granted to the appointment of the father of the contesting Respondent. The Executive Officer of Sri Chamundeswari Temple has not come out with a case that the appointment of father of the contesting Respondent Nagendra Dixit was not approved. On the other hand, the executive officer of the temple has corresponded with Nagendra Dixit treating him as Agamika throughout. Hence, the appointment of Nagendra Dixit and his continuation in the said Office till 2006, cannot be said to illegal.

10. Contesting Respondent was appointed in the place of his father Nagendra Dixit in the year 2006 as is clear from Annexure-D, and the appointment of the contesting Respondent was treated as hereditary appointment. The same cannot be said to be illegal, inasmuch as three successive generations of the contesting Respondent had held the post of Agamika in legal course.

As aforementioned, Ekambar Dixit (great grandfather of the contesting Respondent), Narayan Dixit (grandfather of the contesting Respondent), Nagendra Dixit (father of the contesting Respondent) had held said post prior to the appointment of the contesting Respondent. From the aforementioned facts, it is clear that three generations prior to the contesting Respondent had legally held the post of Agamika. Therefore, there is no violation of Section 34 of the Act of 1927. Consequently, the appointment of the contesting Respondent as Agamika cannot be said to be illegal.

11. The submission of the Petitioners that the contesting Respondent does not have requisite qualification of "Praveena" to be appointed as Agamika, also cannot be accepted. Annexures-E, E1, F and G relied upon by the Petitioners do not disclose anything contrary to the case of contesting Respondent, inasmuch as they do not reveal that the contesting Respondent has failed in Praveena Examination. However, the letters of the Principal of the Government Maharaja Sanskrit College at Annexures-J and K prima facie reveal that the relevant records are not forthcoming in the College during the relevant time showing the requisite qualification of contesting Respondent as Praveena. They further reveal that even if the contesting Respondent is declared as having passed in Praveena Examination, the same would be invalid. These letters are issued by the Principal of the College on 26.3.2007 and 20.4.2007. These letters run contrary to the documents at Annexure-R6 (in WP. No. 2140/2008) produced along with the statement of objections by the contesting Respondent. Annexure-R6 is dated 18.6.2007. It is the letter written by the very Principal of the Government Maharaja Sanskrit College to Executive Officer of Sri Chamundeswari Temple. In the said letter, it is clearly mentioned that the contesting Respondent was admitted to Shaivagamapravara Course in the year 1985-86. He studied "in the said Course during the years 1985-86, 1986-87 and 1987-88 (three years). Thereafter he appeared for examination in the year 1987-88 and has passed Pravara Examination (Agama Part). In the year 1988-89 the contesting Respondent sought admission to Praveena, two years" Course. He was admitted on 19.8.1988. The admission of the contesting Respondent was approved in the year 1989 by the Karnataka State Agama Education and Examination Advisory Board, Mysore. In the year 1989-90 the contesting Respondent appeared for Shaivagamapraveena Course. In the said year, he passed Agama Part. In the year 1990-91 he appeared for Shaivagamapraveena Literature Part. He has failed in the said Subject in that particular year. Subsequently, in the year 1991-92 again the contesting Respondent appeared for the Literature Part of Praveena Examination and has passed. Pursuant thereto, he is given marks card as well as the Certificate at Annexure-H. The convocation in respect of Agama Degrees was held in the year 1994. Since the Convocation relating to Agama Examinations was not held at an early date, the difference in the year of passing as well as the year of issuing Convocation finds place in the Degree Certificate. Annexure-R6 is self-explanatory, inasmuch as it explains the progress of the contesting Respondent till passing of Praveena Examination year by year. It is further

clarified in the very letter that the earlier letter dated 26.3.2007 vide Annexure-J (in WP. No. 2140/2008) was wrongly issued, inasmuch as no adequate material was available in the office of the Principal of the College while issuing such letter dated 26.3.2007. Thus, by the subsequent letter at Annexure-R6 the Principal of the College has clarified based on the records that the contesting Respondent has completed Praveena Examination. The records, maintained by the State Government fully support the case of the contesting Respondent.

12. The report of the Secretary of the Karnataka State Agama Education and Examination Advisory Board, Mysore, submitted in the Convocation held in the year 1993-94 relating to Government Maharaja Sanskrit College, Agama Division, Mysore, is produced by the contesting Respondent's Counsel along with the memo. The said report is dated 24.10.1994. The same clearly reveals that the contesting Respondent had passed Shaivagamapraveena examination in the year 1991-92. The names of other candidates who have passed other examinations for the very year and the subsequent years are also found in the said report. Such report of 1994, that too of the authorised officer of the examination Advisory Board, which is in the form of booklet, cannot be doubted.

It is relevant to note that this Court summoned the then Principal of the Government Maharaja Sanskrit college, Mysore, to explain the two contradictory certificates/statements issued by him vide Annexure-J, dated 26.3.2007 and Annexure-R6, dated 18.6.2007 produced along with WP. No. 2140/2008. The Principal appeared before the Court personally and filed his affidavit on 6.4.2010. He has sworn to the affidavit that by mistake he had issued the certificate at Annexure-J, dated 26.3.2007 without looking to the records. However, he tendered apology orally before the Court and submitted that he may be pardoned. He further submitted before the Court that the statement made in Annexure-6 dated 18.6.2007 by him is correct and that the statement made by him in Annexure-J, dated 26.3.2007 is without any basis.

Since the Principal of the College had committed the mistake by issuing false certificate at Annexure-J, he was imposed costs of Rs. 5,000/- (Rupees five thousand only) on 6.4.2010. These facts would clearly go to show that the certificate at Annexure-J, dated 26.3.2007 is created with a mala fide intention in collusion with the then Principal of the College. Thus, no value can be attached to the certificate at Annexure-J, dated 26.3.2007.

13. The Degree Certificate at Annexure-H clearly reveals that the Degree is awarded to the contesting Respondent in Shaivagamapraveena Examination since the contesting Respondent has passed the said examination in II Class. In view of the same, no value can be attached to the documents at Annexures-J and K produced by the Petitioners. Thus, it is amply clear that the contesting Respondent had requisite qualification of Agama Praveena Degree at the time of his appointment.

14. This Court does not find any illegality in the order dated 29.10.2007, by

which the appointment of the contesting Respondent was ordered to be modified as Agamika and Archaka. As aforementioned as far back as in the year 1911, the great grandfather of the contesting Respondent viz., Ekambar Dixit who was appointed as Agamika was also entrusted with the duties of Archaka. Which means, Ekambar Dixit though was appointed as Agamika was performing the duties of Archaka also. Subsequently also the descendants of Ekambar Dixit viz., Narayan Dixit and Nagendra Dixit were holding the post which was held by Ekambar Dixit. It is not in dispute that Narayan Dixit was appointed in place of his father, on hereditary basis. So also Nagendra Dixit was appointed in place of his father on hereditary basis. Which means, Narayan Dixit had inherited the post and the duties of Ekambar Dixit, so also Nagendra Dixit inherited the post and duties held by Narayan Dixit. Therefore, it is clear that three successive generations prior to the contesting Respondent did perform the duty of Archaka also. The authorities concerned, based on the fact situation and the material on record, have rightly concluded on facts that the ancestors of the contesting Respondent were discharging the duties of Archaka also. Therefore, second Respondent is justified in revising the appointment of the contesting Respondent as Agamika-cum-Archaka, by virtue of the order at Annexure-M, dated 29.10.2007 in WP. No. 2140/2008.

15. As could be seen from Annexure-W produced in WP. No. 484/2007, certain works are assigned to certain posts. The most learned and highly qualified among the indoor temple servants is Agamika, He will have to complete Agama Praveena Course. But as far as Archaka is concerned, he will have to complete only Agama Pravara Course. The course Agama Praveena will have to be done only after completion of Agama Pravara Course. Since Agama Praveena is the highest educational qualification and as Agamika is the prominent post among the Indoor Temple Servants, he is assigned with the work of doing Abhishekaparayana within Sanctum Sanitarium. In the case of exigencies, the duties entrusted to the post may over lap with other duties. As aforementioned, Ekambar Dixit, the great grandfather was assigned the duties of Archaka also, though he was appointed as Agamika. The said hereditary office is continued successively till the appointment of the contesting Respondent. In view of the same, it cannot be said that the contesting Respondent is not entitled to do the duties of Archaka also.

16. It is brought to the notice of the Court by the learned Advocate appearing on behalf of the contesting Respondent that he is not taking extra salary for the post of Archaka. On the other hand, the duties of Archaka are being performed by the contesting Respondent in pursuance of the hereditary office held by him.

17. Sri Aravind Kamath, learned Counsel appearing for the Petitioners draws the attention of the Court to the definition of Archaka under Sub-section (2) of Section 2 of the Act of 1997.

From the said definition, it is clear that Archaka includes Pujari or other person who performs or conducts archana, puja or other rituals. The words "other

rituals" should be read in consonance with archana and puja. It should not be meant to include the person who is bringing water to clean the deity, cleaning floor, up to sanctum sanatorium, etc. The words "other rituals" have to be meant to include the work akin to archana and puja. Agamika does puja as head of the worshipping team. Therefore, Agamika cannot be restrained from doing puja or archana.

Be that as it may, as aforementioned, the great grandfather of the contesting Respondent was assigned with the duties of Archaka also. Since the grandfather and father of the contesting Respondent and thereafter the contesting Respondent have inherited the post since three generations, it cannot be said that the contesting Respondent cannot perform archana.

In view of the above, this Court does not find any ground to interfere with the appointment of the contesting Respondent Sri N. Shashidhar Dixit. Hence, writ petitions fail and accordingly same are dismissed.