

(1999) 12 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23335 of 1999

N.B. Gangadarayya

APPELLANT

Vs

Executive Officer, Sri Bramarambha Mallikarjuna Swamy
Devasthanam, Srisailam, Kurnool District and another

RESPONDENT

Date of Decision : 23-12-1999

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 144, 35, 36, 37
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office
Holders and Servants Punishment Rules, 1987 — Rule 6

Citation : (2000) 1 ALD 375 : (2000) 1 ALT 103

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. P. Balakrishna Murthy, for the Appellant; M/s. C.S.K.V. Ramana Murthy and Nooty Rama Mohan Rao, for the Respondent

Judgement

1. The petitioner in the instant writ petition, challenges an order of transfer vide proceedings No.27 of 1999 dated 8-10-1999 passed by the Executive Officer, Srisailam Devasthanam and also challenges the proceedings - Re. No.A1/ 302/99 dated 30-10-1999 passed by the same authority placing the petitioner under suspension pending enquiry into the charges framed against him. The petitioner seeks further declaration that persons belonging to Veera Shaiva Jangam Maheswara alone are entitled to be appointed as Archaka in Sri Mallikarjuna Swamy temple at Srisailam.

2. Before advertng to the question as to the validity of the said order, it is necessary to notice the relevant facts: The petitioner was appointed as Assistant Archaka by the first respondent on 7-8-1969 in Srisailam Devasthanam and subsequently promoted as Additional Head Archaka. He belongs to Veera Shaiva Jangam Mahaeswara community/sect. He is mainly aggrieved by the order dated 30-10-1999 of the first respondent herein placing him under suspension pending inquiry into the grave charges. The Executive Officer, who is holding the post of

Regional Joint Commissioner of Endowments, and presently discharging the functions of the Executive Officer, Srisailam Devasthanam, has been impleaded by name, as certain serious allegations are levelled against him. The impugned order of suspension is challenged mainly on three grounds:

(1) The first respondent herein has no jurisdiction to place the petitioner under suspension pending enquiry.

(2) The impugned order is vitiated by mala fides on the part of the respondent.

(3) The impugned order placing the petitioner under suspension is improper and is based on extraneous considerations.

3. The impugned order dated 30-10-1999 is self explanatory. It appears that certain charges have been framed against the petitioner vide proceedings dated 21-3-1999, to which the petitioner submitted his explanation on 28-3-1999. The record also would disclose that as many as five charges have been framed against the petitioner under another proceedings dated 21-3-1999 to which the petitioner had submitted his explanation on 29-3-1999. It is stated that as many as twenty five additional charges have also been framed against the petitioner through Charge Memo dated 20-10-1999; but, the petitioner has not yet received the same. It may not be appropriate to refer in detail to the Memorandum of charges and allegations levelled against the petitioner; nor would it be necessary to have a detailed look at the replies submitted by the petitioner to those charges. In view of the gravity of the charges and several irregularities alleged to have been committed by the petitioner, in the interest of the temple, as well as in public interest, the Executive Officer, prima facie, came to the conclusion to place the petitioner under suspension pending inquiry into those charges framed against the petitioner. In the impugned order, it is observed that the petitioner being a responsible Additional Head Archaka was evading to receive the official communications and failed to avail number of opportunities given to him, on several occasions, to mend his ways. It is also stated that the petitioner refused to join in the duty at Sikhareshwara Swamy Temple, Srisailam, after his transfer by order dated 8-10-1999 causing inconvenience to the Devasthanam. It is under those circumstances, the Executive Officer placed the petitioner under suspension pending inquiry.

Jurisdiction:

4. Appointment of office holders and servants etc., is dealt with by Section 35 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act"). The said provision envisages that every vacancy, whether permanent or temporary, amongst the office holders or servants of a charitable or religious institution or endowment shall be filled by the Trustee. It is, however, provided that in the case of a charitable or religious institution or endowment whose annual income exceeds Rs.10 Lakhs, the Executive Officer shall appoint the office holders and servants thereof.

5. There is no dispute whatsoever that the annual income of the temple in question exceeds Rs. 10 Lakhs per annum. The Executive Officer, Srisailem Devasthanam, by proceedings dated 9-9-1969 appointed the petitioner herein as an Assistant Archaka in Swamy temple with effect from 8-8-1969 on purely temporary basis. The petitioner was promoted by proceedings dated 26-4-1989 by the Executive Officer as Additional Pradhana Archaka in Sri Swamy Temple. It is, thus, clear that the Executive Officer of the temple is the appointing authority and exclusive jurisdiction is vested in him to appoint office holders and servants thereof. Sub-section (4) of Section 35 says that the qualifications, method of recruitment and temporary appointments, pay and allowances, discipline and conduct and other conditions of service of the office holders and servants of the charitable or religious institution or endowment, shall be such as may be prescribed. Evidently, the expression "as may be prescribed" means, prescribed by the Rules. Section 36 of the Act prescribes qualifications for being appointed as or for being an Archaka of a religious institution, with which we are not concerned for the present. Section 37 of the Act deals with the punishment of office holders and servants. Section 37(1) of the Act confers jurisdiction upon the Trustee to initiate disciplinary proceedings against all Office holders and servants attached to a charitable or religious institution. It declares that all such office holders and servants shall be under the control of the Trustee and the Trustee may, for the reasons to be recorded in writing, impose fine or order suspension, removal, dismissal or any other prescribed penalty, or any of them for breach of trust, misappropriation, incapacity, disobedience of orders, misconduct, violation of the code of conduct laid down or neglect of duty assigned by or under the Act or other sufficient cause. Sub-section (2) of Section 37 says that notwithstanding anything in sub-section (1), in the case of an office-holder or servant of an institution or endowment whose annual income exceeds rupees ten lakhs, the power to impose any penalty specified in sub-section (1), shall subject to such restrictions and conditions as may be laid down by the Government, be exercised by the Executive Officer after following the procedure.

6. According to the learned Counsel for the petitioner, the Executive Officer of an institution whose annual income exceeds rupees ten lakhs may pass an order imposing any penalty such as imposing fine, or order suspension, removal, dismissal or any other prescribed penalty for the reasons and grounds mentioned in sub-section (1) of Section 37, but the Executive Officer cannot place an office holder or servant under suspension pending inquiry. The learned Counsel relies upon the expression "impose any penalty" in sub-section (1) of Section 37 and contends that the jurisdiction, if any, conferred upon the Executive Officer is only for the purpose of imposing penalty. It is submitted that suspension pending inquiry is not a penalty. Therefore, the Executive Officer has no jurisdiction to place any office holder or servant under suspension pending inquiry. The Trustee alone is entitled to pass an order of suspension.

7. The Government in exercise of power conferred by Sections 37 and 38 read with Section 153 of the Act framed Rules called the Andhra Pradesh Charitable

and Hindu Religious Institutions and Endowments Office Holders and Servants Punishment Rules, 1987 (for short "the Rules"). Rule 6 of the said Rules in categorical terms declares that an office holder or servant attached to an institution may be ordered to be under suspension from office or service pending investigation or inquiry into grave charges where such suspension is necessary in public interest. The jurisdiction is conferred upon the Trustee, Executive Officer, Assistant Commissioner, the Deputy Commissioner or the Regional Joint Commissioner or the Additional Commissioner or the Commissioner as the case may be. A reading of Section 37 and the Rule 6 together, would make it abundantly clear that an office holder or servant of an institution whose annual income exceeds rupees ten lakhs may be placed under suspension, pending inquiry by the Executive Officer. The Executive Officer is conferred with the jurisdiction not only to impose any penalty of imposing fine, suspension, removal, dismissal or any other prescribed penalty, but also to place the office holder or servant under suspension pending enquiry. The expression "to impose any penalty" in sub-section (2) of Section 37 is of wide connotation and amplitude and includes the power to place an office holder or servant of an institution, whose annual income exceeds rupees ten lakhs, under suspension pending inquiry. The power to impose penalty, includes the power to place an office holder or servant under suspension pending enquiry.

8. An attempt is made by the learned Counsel for the petitioner to contend as if Rule 6 of the Rules is ultra vires the provisions of the Act. The Constitutional validity of the Rule is not impugned in this writ petition. The Rule cannot be said to be ultra vires. It is perfectly in tune with Section 37 of the Act. The Rule merely amplifies as to what is contained in Section 37 of the Act, itself. We have already noticed sub-section (4) of Section 35, which declares, inter alia, the discipline, conduct and other conditions of service of office holders and servants of a charitable or religious endowment shall be, as it prescribed.

9. Rule 6 of the Rules specifically prescribes and confers jurisdiction upon the named authorities for ordering an office holder or servant under suspension during inquiry into grave charges. It is obvious that sub-sections (1) and (2) of Section 37 operate in different areas. Section 37(1) confers jurisdiction upon the Trustees to deal with the office holders and servants of an institution whose annual income is less than rupees ten lakhs under sub-section (2) confers exclusive jurisdiction upon the Executive Officer concerned to deal with office holders or servants of an institution, whose income exceeds rupees ten lakhs. The Trustees have the exclusive jurisdiction to deal with the office holder or servant of an institution whose annual income is less than rupees ten lakhs. Like wise, the Executive Officer is conferred with exclusive jurisdiction to deal with any office holder or servant attached to an institution whose annual income is more than rupees ten lakhs. There is a clear delineation of jurisdiction and power between the trustee and the Executive Officer. Each have to discharge their respective duty and exercise jurisdiction in their own sphere.

10. Be that as it may, the power of appointment of an office holder or a servant in respect of a religious institution whose annual income exceeds rupees ten lakhs is exclusively conferred upon the Executive Officer. The appointing authority shall always have the requisite power and jurisdiction to exercise disciplinary control over all the office holders and servants and such power of discipline, control shall always include the power to place an office holder or servant under suspension pending inquiry into grave charges or investigation. The scheme of the Act read together with the said Rules would undoubtedly reveal that the Executive Officer is the competent authority to place an office holder or servant of an institution whose annual income exceeds rupees ten lakhs under suspension pending inquiry into grave charges or investigation. The conclusion is inescapable. It would be absurd to interpret Section 37 of the Act in the manner suggested by the learned Counsel for the petitioner. The contention, if upheld, would amount to a saying that the Executive Officer would have the jurisdiction to impose penalty of even dismissal upon the office holder or servant of an institution, whose annual income exceeds rupees ten lakhs; but would have no jurisdiction to place such an office holder or servants under suspension pending inquiry. Such an interpretation cannot be placed upon Section 37 of the Act.

11. The decisions in General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, ; Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others, and V. Sudeer Vs. Bar Council of India and Another, , upon which reliance is placed by the learned Counsel for the petitioner in support of his contention is of no relevance whatsoever to decide the said question.

12. In fact, Sections 35, 36 and 37 of the Act have to be read together along with Rule 6 of the Rules framed under the Act and such a combined reading would make it clear that exclusive jurisdiction is conferred upon the Executive Officer to deal with the office holders and servants of an institution whose annual income exceeds rupees ten lakhs and such power to deal with the office holders and servants, includes the power to place them under suspension pending inquiry into the grave charges or investigation in public interest. The contention, therefore, is rejected. The order impugned does not suffer from any jurisdictional errors.

Mala Fides:

Whether the impugned order could be said to be mala fide one.

13. There appears to be an internecine war between the petitioner and the respondent-Executive Officer, each making serious allegations against the other. Sri P. Balakrishna Murthy learned Counsel for the petitioner would, however, contend that the very tone and tenor of the allegations made in the impugned order would reveal vindictiveness on the part of the Executive Officer and the malice is apparent on the face of the proceedings. It is contended that such vindictive order can never be treated as an order passed in public interest. It is

submitted that it is a deliberate and motivated act on the part of the Executive Officer to place the petitioner under suspension, pending inquiry. It is contended that the charges are not grave and no public interest is involved in the matter. It is submitted that the petitioner has been subjected to harassment at the hands of the Executive Officer.

14. The second respondent herein is posted as a regular Executive Officer, though he is holding the post of Regional Joint Commissioner, Endowments. The petitioner submits that various complaints were filed against the second respondent in Lok Ayukta levelling many serious allegations, like misappropriation of temple funds, drinking and womanising within the Srisaila Devasthanam limits. According to the petitioner, the allegations include, the habit of eating non vegetarian dishes in the Alaya Pranganam, which practice is prohibited by the Government. It is stated that based on such complaints only, the officials of And Corruption Bureau (ACB) and Lok Ayukta seized and sealed various records and took them away for the purpose of prosecuting the second respondent.

15. It is the cases of the petitioner that the second respondent some how developed an impression that as if the petitioner was behind, in some body making such complaints and instrumental for registration of various cases and seizure of records. It is alleged that since May, 1999, the second respondent started harassing the petitioner and persecuting him on one or the other pretext. It is stated that the petitioner was insulted openly right in the presence of pilgrims, whenever the petitioner made an attempt to reason out that insulting in public is not proper. It is alleged that the second respondent openly threatened the petitioner that he would initiate proceedings under the SC/ST Atrocities Act, by stating that the petitioner would never be able to come out of it in his life. Unable to bear with the harassment, the petitioner claimed to have applied for medical leave from 19-6-1999 under the advice of a Medical practitioner. The petitioner extended the leave from time to time. It is stated that the second respondent refused to sanction leave even on medical grounds.

16. The petitioner submits that two charge memos dated 21-3-1999 levelling seven charges against the petitioner were issued by the second respondent and a mere look at those charges would show that they are all deliberately designed and trumped up only to victimise him. According to the petitioner, the whole process is mala fide. It is stated that the petitioner could not have been placed under suspension pending inquiry with reference to the charges framed against him as early as on 21-3-1999 to which explanation was submitted on 28-3-1999. The petitioner submits that the very fact that the second respondent transferred him under an order dated 8-10-1999, while he was on medical leave, itself, would show the mala fides on the part of the second respondent. It is an attempt to harass the petitioner.

17. There is one more circumstance upon which the petitioner would place reliance in support of his plea of mala fides viz., the second respondent filed a

caveat petition before this Court on 10-10-1999 apprehending that the petitioner may challenge the impugned order of transfer dated 8-10-1999. Such a caveat has been filed in this Court even before the petitioner received the impugned order of transfer. These are all the circumstances upon which the petitioner placed reliance in support of his plea relating to allegations of mala fides. The petitioner submits that framing of charges against the petitioner through proceedings dated 21-3-1999; subsequent charge Memo dated 20-10-1999 and the impugned transfer order dated 8-10-1999 have ultimately culminated in the order dated 30-10-1999 placing the petitioner under suspension. They are all integral and part of the same process, deliberately contrived and engineered by the second respondent to wreak vengeance against the petitioner. The cumulative effect of all these facts, according to the petitioner, would amply demonstrate malice on the part of the second respondent resulting in passing the impugned order.

18. It is also the case of the petitioner that the order passed by the second respondent placing him under suspension would indicate a totally closed mind, almost, finding the petitioner guilty by the second respondent. The impugned order reads as if it is an order imposing penalty or finding the petitioner guilty, is the submission. It is stated that the respondent herein had passed similar orders against the other employees in Devasthanam and in those cases also the second respondent filed caveats which is unbecoming of a Regional Joint Commissioner of Endowments. It is stated that all those orders were suspended by this Court in the writ petitions filed by those aggrieved employees.

19. The Executive Officer denies the material allegations and averments made against him. The Executive Officer filed a detailed counter affidavit not only specifically-denying the specific allegations and mala fides levelled against him, but also stated certain facts based upon which he claimed to have arrived at the prima facie conclusion to place the petitioner under suspension in public interest. It is not necessary to refer to those facts in detail, as even any unintended observation may cause prejudice to either of the parties.

20. Suffice it to notice that the allegations levelled against the petitioner are serious and grave in nature.

21. The respondent in specific terms states that he had never insulted the petitioner in the presence of the devotees, nor threatened him that he will book cases against him under the provisions of the ST/SC Atrocities Act. However, the Executive Officer had issued various Memos to the petitioner directing him to conduct himself properly and discharge his duties in the temple. I do not propose even to refer to those Memos as the petitioner is yet to file his reply to the subsequent charge memo containing as many as twenty five charges and most of these instances might have been referred to in those charges and may have a bearing upon the defence of the petitioner. Shorn of all the details, the respondent submits that the petitioner committed several irregularities in discharge of his day to day duties in the temple. The respondent submits that the

impugned orders have been passed in the interest of Devasthanam and the public at large. In the counter affidavit, it is further stated that as many as thirty charges have been framed against the petitioner for various acts of corruption, indiscipline, misconduct, disproportionate sources of income and misbehaviour etc. It is, however, stated that the petitioner appears to be labouring ill feelings towards scheduled castes and scheduled tribes. The petitioner is alleged to be in the habit of levelling false and mischievous allegations against the Executive Officers and his colleagues.

22. Learned Counsel for the petitioner relies upon one of the sentences in the counter affidavit and contends that particular averment in the counter affidavit, itself, would reveal that the respondent entertained an idea and firmly believed that it is the petitioner, who is behind and responsible for all the allegations levelled against him before the Lok Ayukta and ACB and such feeling on the part of the respondent has resulted in passing the impugned order. In the circumstances, it may be necessary to notice that particular averment made in the counter affidavit filed by the second respondent:

"I submit that it is obvious that he is responsible for all the petitions and allegations against me and to escape from the clutches he is reiterating thus in the writ petition since as many as thirty charges have been framed against him for various acts of corruption, indiscipline, misconduct, disproportionate sources of income and misbehaviour etc."

23. The question that arises for consideration in the instant writ petition is - whether there is any prima facie case for placing the petitioner under suspension. Merely because there are some serious differences between the petitioner and the respondent No.2, the impugned order cannot be set aside and interfered with, provided it reveals prima facie case for placing the petitioner under suspension pending inquiry into those charges. It is not possible for this Court to express any opinion whatsoever with regard to the truth or otherwise of the allegations levelled against the petitioner. It is not as if suddenly certain allegations are invented and made against the petitioner. Charge Memos were issued against the petitioner as early as in the month of March, 1999. Number of Memos were issued against him in the month of June, 1999, pointing out the adamant attitude adopted by him. It is the case of the respondent-Executive Officer that even in the explanations submitted by the petitioner, the petitioner used unparliamentary language almost ridiculing him for initiating disciplinary action against him. Some of the charges referred to in the impugned order are specific, which may definitely require an inquiry into the matter. The tone and tenor of the explanation submitted to the charges and some of the instances alleged to have occurred in the temple precincts may have hurt the feelings of the second respondent-Executive Officer; but, it does not mean that there should be no inquiry against the petitioner with reference to these charges. An employee may indulge in some act, which may hurt the dignity of the office of the disciplinary authority and that, itself, may, in a given case, amount to indiscipline

and if disciplinary action is initiated against him it would not be open to the employee to contend that the disciplinary action cannot be initiated against him on the ground that the disciplinary authority has some prejudice against him. If such a situation is allowed, it would be easy for an employee to indulge in some act adversely affecting the dignity and the majesty of the office of the disciplinary authority, only to avoid further disciplinary action on the ground of prejudice. If such a situation is permitted, no inquiry can be held against any employee on the stated grounds of indiscipline and other charges even if material is available for making such inquiry. Such a course is not permissible. The question, therefore, is as to whether the interest of the temple and public interest requires suspension of the petitioner pending inquiry and investigation into the grave charges.

24. Sri P. Balakrishna Murthy, learned Counsel appearing for the petitioner placed reliance upon the very well known decisions of the Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, ; *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, and *State of Punjab and Another Vs. Gurdial Singh and Others*, , in support of the petitioner's case and contends that this is a clear case of abuse and misuse of power by the second respondent. It is contended that the instances and circumstances set out in the affidavit filed in support of the writ petition would reveal the personal hostility of the second respondent towards the petitioner which has resulted in passing of the impugned order. The second respondent used his power and passed the impugned order placing the petitioner under suspension for achieving the alien purpose -- Wreaking vengeance on the petitioner and not for protecting any public interest or the interest of the temple. It is a colourable exercise of power by the second respondent, is the specific submission made by the learned Counsel for the petitioner.

25. It is well settled that, he who seeks to invalidate or nullify any Act or order must "establish the charge abuse or misuse by the authority of its power. It is observed in *Pratap Singh's* case (*supra*), as under:

"Some times Courts are confronted with cases where the purposes sought to be achieved are mixed,- some relevant and some alien to the purpose. The Courts have, on occasions, resolved the difficulty by finding out the dominant purpose which impelled the action and where the power itself is conditioned by a purpose, have proceeded to invalidate the exercise of the power when any irrelevant purpose is proved to have entered the mind of the authority (See: *Sadler v. Sheffield Corporation* 1924 1 Ch.594, as also Lord Denning observed in *Fitzwilliam's (Ear!) Wentworth Estate Co. v. Minister of Town and Country Planning* 1951 2 KB 284 . This is on the principle that if in such a situation the dominant purpose is unlawful then the act itself is unlawful and it is not cured by saying that they had another purpose which was lawful."

26. Can it be said that in the instant case, the dominant motive which induced the Executive Officer to take action against the petitioner was to initiate

disciplinary proceedings against him for the alleged misconduct, which he bona fide believed that he had committed, or to wreak vengeance on him. If really, the Executive Officer wanted to wreak vengeance on the petitioner, nothing prevented him from placing the petitioner under suspension pending inquiry immediately upon serving the charge memo dated 21-3-1999. The subsequent instances and the material resulting in framing of additional twenty five charges against the petitioner appears to have been the crucial factor in arriving at the conclusion to place the petitioner under suspension pending inquiry. It is not as if the petitioner was placed under suspension immediately pending inquiry based upon the allegations levelled against him in the charge Memo dated 21-3-1999. In the impugned order, itself, it is stated that several irregularities relating to moral turpitude, indiscipline, misappropriation, disproportionate sources of income etc., came to light and as such, as many as twenty five additional charges have been framed and the petitioner refused to receive the same. The fact that the petitioner's failure to join the duty at Sikhareshwara temple upon his transfer and his failure to submit reply for not joining the duty has resulted in inconvenience to Devasthanam and the same also appears to have been taken into consideration before passing the impugned order of suspension. The following instances subsequent to March, 1999, as stated in the counter affidavit appear to have been taken into consideration by the Executive Officer for placing the petitioner under suspension and all those allegations lead to framing of twenty five charges against the petitioner vide proceedings dated 30-10-1999. It is stated in the counter affidavit:

"(1) He used to collect pedakanukas from the devotees for his personal benefit by sitting or standing at focal points i.e., near about Hundies, Entrance etc., resulting in bad reputation among the devotees. As such he was instructed to conduct properly vide this office Re. No.G2/3683/99 dated 1-6-1999.

(2) I submit that as per sastras spoiled articles should not be used for performance of pujas or abhishekams to the diety. Deliberately the petitioner, who was in charge of puja articles at Sri Mailikarjuna Swamy Temple, used to issue spoiled "Dakshinavritha Sankham" to the other Archakas and he is using good sankham to the puja of the devotees who gave personal offerings to him. Hence in the interest of Devasthanam and the pilgrims, he was instructed not to repeat such acts in future vide this office Re. No.G2/3683/99 dated 18-6-1999.

(3) I also submit that he was kept in charge of VIP duties and he misused the same and used to treat all the rich people as VIPs. and used to collect the tickets amounts from the rich devotees by performing Abhishekams without purchasing the tickets through he collected the amounts from them and thus causing financial loss to the Devasthanam. Hence, a Memo was issued to the petitioner in this office Re.No.G2/3683/99 dated 14-6-1999.

(4) Further being Additional Head Archaka of. Sri Mallikarjuna Swamy Temple he held the charge of the keys of the temple. Since the petitioner is working as a responsible Additional Head Archaka he was handed over temple keys to handle

them in person. As against the interests and instructions he derelicted his legitimate duties in this regard and used to hand over the keys to some one else the temple at 4.00 a.m. and also to close the temple during night at 10.00 p.m. With an intention to prevent any untoward incident i.e., possible thefts he was instructed in this office Re. No.G2/3683/99 dated 25-6-1999 to handle the temple keys in person failing which action will be taken against him.

(5) I further submit that as and when the VIPs. and rich people visit the temple, after performing pujas, the petitioner used to accompany them to Sri Bhramaramba Devi temple for collecting dakshinas (though the same is abolished by the provisions of Section 144 of the Endowments Act, 1987) leaving the performance of pujas in Swamy vari temple. In fact no duties are assigned to the petitioner at Sri Bhramaramba Devi Temple and thus he was causing much inconvenience to the Devasthanam as well as ordinary and poor pilgrims and resulting in bad reputation to Devasthanam among the public. Hence he was warned not to repeat such acts in future in this Office Re. No.G2/3683/99.

(6) I further submit that he used to extend the temple honours to all the rich people known to him personally which is against the instructions issued by the higher authorities. In fact the temple honours are to be given to the select dignitaries such as Peethadhipaties, President of India, Hon"ble Chief Justice and Hon"ble Justices, Prime Minister, Chief Minister etc., with an intention to please the rich devotees and to collect huge amounts from them for his personal benefit, the petitioner used to extend temple honours and thus caused much embarrassment to the Devasthanam. Hence he was warned in this office Re. No.G2/3683/99 with instructions not to repeat such acts in future failing which action will be taken against him.

As stated above there are several irregularities which are being committed by him and as such I submit that he is not discharging duties entrusted to him properly.

(7) As is clear from the facts, set out, I have been taking various steps in the overall interest of the Devasthanam to prevent the petitioner's malpractices and as such he went on medical leave from indulging in, though he is otherwise alright, without handing over the charge and even without waiting for the sanction of leave. Hence his leave was rejected and was called upon to assume duty vide this Office Re. NO.A3/4623/99 dated 9-6-1999. Thereafter, he joined duty and requested to sanction leave. While sanctioning leave he was instructed to handover the complete charge to the Head Archaka of Sri Mallikarjuna Swamy Temple. But he handed over some of the items and retained some of the puja articles with him and went on long leave and caused hindrance to the Devasthanam in performing pujas to the diety. Hence, after the expiry of leave he was called to report for duty but he refused to receive the orders and hence the same was affixed on the door of his residential quarter at Srisaila Devasthanam. But he did not join duty even till today and is causing hindrance to the Devasthanam."

27. In the circumstances, can it be said that there is no material whatsoever against the petitioner for placing him under suspension pending inquiry. But, what is mala fides in the jurisprudence of power. In Gurudial Singh's case (supra), Justice V.R. Krishna Iyer, speaking for the Court observed:

"The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity kept it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power -sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated "I repeat..... that all power is a trust - that we are accountable for its exercise - that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act."

28. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order.

29. In E.P. Royappa Vs. State of Tamil Nadu and Another, , the Supreme Court observed that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved and the very seriousness of such allegations depends upon the proof of higher order of accountability.

30. The affidavit evidence in the instant case does not suggest vindictiveness, vengeance on the part of the Executive Officer. It does not even reveal any improper motive on the part of the Executive Officer. The petitioner has never attributed any malice whatsoever to the respondent by questioning the action of Executive Officer in issuing the charge Memos in the month of March, 1999; but, on the other hand the petitioner submitted his explanation in the matter. Charges

were framed against the petitioner in the month of March, 1999. No doubt, the replies given by the petitioner to various Memos issued by the Executive Officer would reflect acrimony on the part of the petitioner towards the Executive Officer, but the same is required to be examined in the back ground that the petitioner was already served with charge memos requiring his explanation. The petitioner has not chosen to challenge even the transfer order dated 8-10-1999, until he was placed under suspension pending inquiry into the charges under order dated 30-10-1999. Whatever evidence that is made available does not reveal any improper motive or any indecent haste on the part of the respondent herein to place the petitioner under suspension pending inquiry; nor the record would reveal any ingenious inspiration on the part of the Executive Officer to get-rid of the petitioner. Mere allegations cannot be taken as proved. Suffice it to observe that no compelling circumstances appear that the respondent had acted with ulterior object to achieve any collateral purpose. In the facts and circumstances, it cannot be said that the impugned order is vitiated by any mala fides on the part of the second respondent. The contention is accordingly rejected.

31. For the very same reasons, the third contention also fails.

About Transfer

32. The petitioner also challenges the order dated 8-10-1999 passed by the Executive Officer re-allocating duties to the petitioner herein and the Head Archaka, M Rachaiah. Under the impugned arrangement the duty of performing puja at Sri Mallikarjuna Swamy Temple and supervision of all sub-temples at Srisailam etc., were entrusted to the Head Archaka and the petitioner was entrusted with the duty of performing pujas at Sri Sikhaheswara Swamy Temple with the assistance of regular archaka and supervision of Sakshi Ganapathi, Hatakeswaram and Paladhara-Panchadhara temples. It is not even an order of transfer; but an administrative arrangement reallocating the duties between the Head Archaka and the Additional Head Archaka.

33. It appears that there is some litigation between the petitioner and one Rachaiah, who is a very close relative of the petitioner, relating to inter se seniority between them. The said Rachaiah filed writ petition - WP No.2334 of 1996 challenging the order passed by the State Government in regard to his promotion. The said writ petition was disposed of by this Court by order dated 2-8-1999 directing the Commissioner to dispose of the revision petition filed by the petitioner herein assailing the orders of the Executive Officer dated 28-1-1996. This Court further directed the respondents to maintain status quo as regards position of the petitioner and the fourth respondent therein in respect of their functioning in the temple as on the date, pending disposal of the revision petition-The subsequent order dated 4-10-1999 directing the Commissioner to accept the fresh set of papers representing the revision petition by the writ petitioner herein, would have no bearing on the question, with which we are not presently concerned. However, the learned Counsel for the petitioner would submit that the Executive Officer ought to have maintained status quo during the

pendency of the revision petition and ought not to have disturbed the petitioner from the position which he was holding in the temple. The order directing the respondents to maintain status quo is with reference to the respective positions held by the petitioner and M. Rachaiah. The said order does not put any embargo upon the Executive Officer in moving the petitioner from one temple to the other. The said order has no effect on the status and emoluments of the petitioner in any manner whatsoever to his disadvantage. The order dated 8-10-1999 characterised by the petitioner as an order of transfer is only an administrative arrangement. Such orders cannot be interfered with by this Court. The order impugned cannot be said to be in contravention of the order of this Court in WP No.2334 of 1996. I do not find any merit whatsoever in this contention.

34. The petitioner prays for a declaration that only Veera Shaiva Jangam Maheswara to be appointed in Sri Mallikarjuna Swamy temple as Archaka. This Court at this stage need not go into this question at all for the simple reason that the person who is posted to perform Puja at Sri Mallikarjuna Swamy temple also belongs to the same Veera Shaiva Jangam Maheswara sect. One M. Rachaiah, Head Archaka, who is posted to perform puja in Sri Mailikarjuna swamy temple, is stated to be no other than the brother-in-law of the petitioner. It is not as if the petitioner alone has to be posted for performing pujas in Sri Mallikarjuna Swamy temple, because he belongs to that particular sect. Another person, who is working as Head Archaka, has been posted in Sri Mallikarjuna Swamy temple for performing pujas. Therefore, even if this contention is accepted, the action of the Executive Officer in posting the said M. Rachaiah, who belongs to the same sect as that of the petitioner, to perform pujas at Sri Mallikarjuna Swamy Temple does not suffer from any infirmity.

35. For all the aforesaid reasons, I do not find any merit in this writ petition. However, none of the observations made in this order shall be construed as if the Court has expressed any opinion whatsoever on the merits of the case. The Court has not expressed any opinion whatsoever with regard to the charges framed against the petitioner. The inquiry initiated against the petitioner may have to go on in accordance with law and in a fair manner. The petitioner may have to be provided with reasonable opportunity to present his case and defend himself against the accusations made in the Memorandum of charges. The inquiry shall not be influenced by any of the observations made in this order and the same shall be completed as expeditiously as possible.

36. The writ petition shall accordingly stand dismissed. There shall be no order as to costs.