

(2010) 06 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 3354, 3622 and 3844 of 2009

Pagadala Pratap and Arcod Muthu

APPELLANT

Vs

State of Andhra Pradesh and Others
 Gandla Bathisetty
Vs The Government of Andhra Pradesh, Revenue
(Endowments-II) Department and Sri Kalahastheeswara
Swamy Devasthanam
 Smt. Talari Sri Lakshmi and
Others Vs Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 22-06-2010

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 15, 15(1), 17, 17(3), 17(4)
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments
Appointment of Trustees Rules, 1987 — Rule 3, 4(1), 5(1), 6(2), 7
Constitution of India, 1950 — Article 226
Writ Proceedings Rules, 1977 — Rule 12

Citation : (2010) 5 ALD 1

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : Ch. Kanaka Durga, in Writ Petition No. 3622 of 2009, P. Gangaiah Naidu, for M. Vidyasagar, in Writ Petition No. 3354 of 2009 and S. Subba Reddy, Writ Petition No. 3844 of 2009, for the Appellant; G.P. for Respondent Nos. 1 to 5, A. Chandraiah Naidu, for Respondent Nos. 8, 11 and 14 in Writ Petition No. 3622 of 2009 and Respondent Nos. 2, 5 and 8 in Writ Petition No. 3844 of 2009 and V.T.M. Prasad, for Writ Petition No. 3354 of 2009, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.—Constitution of the Trust Board of Sri Kalahasteswara Swamy Devasthanam, SriKalahasti, Chittoor District, vide G.O. Rt. No. 313 dated 20.02.2009, is under challenge in these three writ petitions. As such they were heard together, and are now being disposed of by a common order. Since all the trust board members are arrayed as respondents, and the Minister for Information and Public Relations, and the Principal Secretary (Revenue), Government of Andhra Pradesh, (against both of whom malice is alleged), are

arrayed as respondents eo-nominee in W.P. No. 3622 of 2009 it would suffice, for disposal of all these three writ petitions, if the facts in W.P. No. 3622 of 2009 are noted.

2. As the annual income of the Sri Kalahasthiswara Swamivari temple, a Section 6(a) religious institution, exceeds rupees one crore the State Government, which is the competent authority to appoint a board of trustees, u/s 15(1) of the A.P. Charitable & Hindu Religious Institutions & Endowments Act (Act 30 of 1987), issued a notification in G.O. Rt. No. 2355 dated 05.11.2007 inviting applications from interested persons for appointment as non-hereditary members of the trust board. W.P. No. 20269 of 2008 was filed questioning the procedure prescribed by the Government, in G.O. Rt. No. 2355 dated 05.11.2007, for appointment of trustees to the Sri Kalahasteeswara Swamivari temple. This Court, by order in W.P.M.P. No. 26459 of 2008 dated 26.08.2008, suspended the process of appointment of trustees observing that the Government could issue a fresh notification duly following the prescribed procedure. Thereafter the Government issued the notification in G.O. Rt. No. 2121 dated 18.11.2008, in super session of G.O. Rt. No. 2355 dated 05.11.2007, inviting applications from persons interested in being appointed as trustees. The said notification was published in the local newspapers on 05.12.2008. Pursuant thereto, 114 applications were received by the Government. These 114 applications were forwarded to the Commissioner of Endowments, vide memo dated 27.01.2009, for causing verification of their antecedents. The Commissioner split the 114 applications in two batches. While 97 applications were sent, vide proceedings dated 10.02.2009, for verification of antecedents to the Assistant Commissioner of Endowments, Chittoor, the other 17 were sent to the Assistant Commissioner of Endowments, Rajahmundry.

3. Even before the antecedents of the applicants could be verified, the Minister for Information and Public Relations, vide letter dated 12.02.2009, informed the Minister of Endowments that the term of the earlier trust committee of the Sri Kalahasti Devasthanam had expired on 26.11.2007; and a number of representations were received for re-constitution of the same. While enclosing a copy of the request of the Sri Kalahasthi M.L.A. proposing the names of ten persons to be appointed as trustees of the Sri Kalahastiswaraswamy temple, the Minister of Information and Public Relations requested the Minister of Endowments to consider constituting a trust board with those ten members. By its memo No. 49015/Endts.II/AI/2008 dated 17.2.2009 the Government, while enclosing a copy of the letter of the Minister of Information and Public Relations dated 12.2.2009, requested the Commissioner of Endowments to verify whether the applications of the 10 applicants, named in the said letter of the Minister, had been received in time, to examine the matter and furnish his remarks along with the antecedents of the applicants, including these ten applicants, immediately for taking further action.

4. The Assistant Commissioner, Rajahmundry forwarded the applications, vide

memo dated 16.02.2009, to the Inspector of Endowments to cause enquiry and submit his report. The Inspector of Endowments, Kakinada submitted his report on 18.02.2009. The Assistant Commissioner of Endowments, Rajahmundry forwarded his report to the Commissioner of Endowments on the same day despite the fact that the Inspector of Endowments, in his report dated 18.02.2009, had stated that the antecedents of Smt. Talari Srilakshmi, (the petitioner in W.P. No. 3844 of 2009), had not been verified as she was not available in station as on that date; and that a report regarding her antecedents would be submitted later.

5. The Assistant Commissioner of Endowments, Chittoor, in his report dated 18.2.2009, stated that he had visited Srikalahasti and had cause discreet enquiries on 17.02.2009 and 18.02.2009; he had issued a paper publication in "Vaartha" daily on 18.02.2009 making the applicants aware of the proposed enquiry; and he had also verified the antecedents of persons who were not residents of Srikalahasti. In his report dated 18.2.2009 the Assistant Commissioner of Endowments, Chittoor records that, at the time of verification of antecedents of the applicants at Srikalahasti, he had received applications from three persons, two by hand and one by fax, and that he was also forwarding the verification report of the antecedents of these three applicants. The said three applications include the application of Sri M. Ravichandra Reddy who was appointed, under the impugned G.O, as one of the trustees of the temple. The Assistant Commissioner, Chittoor also records that in response to the paper publication dated 18.2.2009 24 out of 98 applicants had appeared before him at the time of verification of antecedents; he had verified the antecedents of all the 98 applicants, including the three new applications, as per the procedure laid down under Act 30 of 1987; he had conducted discreet enquiry on the antecedents of the individuals in accordance with the procedure prescribed under law; he had verified the lease records and the DCB of the temple in order to ascertain whether any person, among the applicants, was the tenant/lessee of the temple, and whether any office holder, who was getting remuneration from the temple funds, had applied for trusteeship; and he had received a joint representation on 18.02.2009 from certain applicants protesting against the exercise being undertaken for verification of antecedents.

6. The report of the Assistant Commissioner, Chittoor dated 18.2.2009 was received by the Commissioner of Endowments on the same day and he, in turn, submitted his report to the Government on 19.02.2009. In his proceedings dated 19.2.2009 the Commissioner informed the Secretary to the Government, Revenue (Endowments) Department, that the Executive Officer of the Devasthanam had published the notification issued by the Government in "Andhra Jyothi" daily newspaper on 5.12.2008; the schedule time of 20 days had ended by 24.12.2008; and 114 applications had been received by the Government in response to the notification issued vide G.O. Rt. No. 2121 dated 18.11.2008. The Commissioner stated that the 10 applications, referred to in the letter of the Minister dated 12.2.2009, were received in time except in the case of Smt. Talari

Vasantha whose application was received on 27.12.2008 after the schedule time. The Commissioner noted that the Assistant Commissioner, Chittoor had observed in his report that six, out of the 114, applicants were disqualified to be appointed as trustees u/s 19(i) of Act 30/87; among the 17 applications, forwarded to the Assistant Commissioner, Rajahmundry, 16 were got verified; among them two applicants stood disqualified u/s 19(i) of Act 30 of 1987; except these 8 (6+2), all the other applicants, as verified by the Assistant Commissioners, were qualified to be appointed as trustees; they did not suffer from any disqualification; and the particulars of the six mukhya-archakas were being forwarded to the Government. The Government was requested to issue suitable orders duly selecting candidates from among the qualified applicants.

7. The notification issued by the Government, in G.O. Rt. No. 2121 dated 18.11.2008, was subjected to challenge in W.P. No. 3354 of 2009 and batch and this Court by its order dated 20.02.2009, while observing that persons, who had submitted applications on or before 26.12.2008 in pursuance of the notification dated 18.11.2008, were entitled to be considered for appointment as members of the trust board, directed the respondents not to constitute the trust board from amongst persons whose applications were received beyond 26.12.2008. On the very same day G.O. Rt. No. 313 dated 20.02.2009 was issued constituting the trust board of Srikalahasthiswara swamy temple.

8. The Private Secretary to the Minister of Endowments, vide note dated 21.2.2009, informed the Principal Secretary (Revenue) that the Minister of Endowments had informed that the orders issued in G.O. Rt. No. 313 dated 20.2.2009 constituting the trust board of Srikalahasteeswara Swami Vari Devasthanam be kept in abeyance until further orders. The Principal Secretary was requested to issue necessary orders in this regard immediately. G.O. Rt. No. 319 dated 21.2.2009 was issued to the effect that the Government, after reconsidering the matter, was keeping the orders issued in G.O. Rt. No. 313 dated 20.2.2009 in abeyance until further orders. On the same day i.e., 21.2.2009, the Private Secretary to the Minister of Endowments sent another note to the Principal Secretary (Endowments) Revenue that the Minister for Endowments had informed that the abeyance orders issued in G.O. Rt. No. 319 dated 21.2.2009 may be withdrawn with immediate effect. The Principal Secretary was requested to issue necessary orders in this regard immediately. Consequently G.O. Rt. No. 322 dated 22.2.2009 was issued withdrawing the orders issued in G.O. Rt. No. 319 dated 21.2.2009. As a result the orders issued in G.O. Rt. No. 313 dated 22.2.2009, whereby ten persons were appointed as trustees, stood revived.

9. When the matter was listed before this Court on 02.06.2010, Sri P. Gangaiah Naidu, Learned Senior Counsel appearing on behalf of the petitioners, put forth his submissions in part. As this Court was of the view that the entire records, including the antecedent verification details of the persons appointed; the note file and the official file relating to G.O. Rt. No. 313 dated 20.02.2009; and the

reports of Assistant Commissioners of Chittoor and Rajahmundry; should be called for, the matter was adjourned to 04.06.2010, on which date the Learned Government Pleader for Endowments produced the records.

10. As respondent Nos. 6 and 7, who were arrayed as respondent eo-nominee, and some of the trust board members were not represented by Counsel, this Court directed the Registry to verify whether notices had been served on the respondents in all the three writ petitions and directed that the matter be listed on 08.06.2010. The Registry, in its note dated 05.06.2010, informed that all the 17 respondents in W.P. No. 3622 of 2009 were served. All the respondents in the other two writ petitions are arrayed as respondents in W.P. No. 3622 of 2009. Despite services of notices, no counter affidavit has been filed either by the Minister of Information and Public Relations, or by the Principal Secretary (Revenue) though they are arrayed as respondents eo-nominee. Except for respondents 8, 11 and 14, none of the other respondents have chosen to file their counter affidavits.

11. Rule 12(i)(a) of the Writ Proceedings Rules, 1977 requires every respondent in every Writ Petition to enter appearance and file a counter affidavit in opposition as soon as may be and, in any event, not later than six months from the date of service of notice in the Writ Petition or the service of Rule nisi on the said respondent "unless otherwise directed by the court". Rule 12(b)(ii) stipulates that no counter affidavit filed beyond six months, from the date of service of notice on the opposite party or parties in the Writ Petition, shall be received or be used at the hearing of the Writ Petition unless the Court permits the respondent, on an application containing special reasons, to do so. As more than a year has elapsed since these writ petitions were filed, and as the Learned Senior Counsel and the other Counsel appearing on behalf of the petitioners, assert that the respondents were procrastinating and avoiding filing of counter affidavits only to drag on the matter till completion of the two year term of the trustees, and thereby render the writ petitions infructuous, the writ petitions were heard and are being adjudicated on the basis of the records placed before this Court by the Learned Government Pleader for Endowments, and the oral submissions made by Counsel on either side.

12. Heard Sri P. Gangaiah Naidu, Learned Senior Counsel, Sri M. Vidyasagar and Sri N. Gurugopal, Learned Counsel for the petitioners. The Learned Government Pleader for Endowments put forth his submissions on behalf the official respondents and Sri Chandraiah Naidu, Learned Counsel appeared on behalf of the respondent Nos. 8, 11 and 14, put forth his submissions on behalf of those appointed as trustees of the Srikalahastiswamy vari Devasthanam.

Antecedent Verification by the Assistant Commisisoners is not in accordance with the Provisions of Act 30 of 1987 and the Trustees Rules:

13. It is contended on behalf of the petitioners that the antecedent verification exercise carried out by the Assistant Commissioner of Endowments, Chittoor, of

around 100 applicants, was only on 17th and 18th February, 2009 at Srikalahasthi; antecedents of more than hundred applicants could not have been verified within a span of two days;; the report of the Assistant Commissioner, Chittoor makes no mention as to how (1) the antecedents of those who resided in places far away from Srikalahasthi, that too at Chennai in the State of Tamilnadu, and Bangalore in the State of Karnataka, were verified by him sitting at Srikalahasthi; and (2) whether all the qualifications/disqualifications, prescribed in Act 30 of 1987, of all the applicants was verified by him; verification of just the daily cash book and the lease records of the temple, to ascertain whether the applicants were tenants/lessees, and whether any of the office holders, who were getting remuneration from the temple funds, had applied for trusteeship, did not suffice as the exercise of verification of antecedents required several other factors to be examined; only 24 of the 98 applicants had, admittedly, appeared before the Assistant Commissioner at the time of verification of antecedents; the report makes no mention of whether, and if so the mode and manner in which, verification of the antecedents of the other 74 applicants was carried out; mere examination of the 24 applicants, and their self-serving statements, would not suffice as the Trustees Rules required an independent exercise of antecedent verification to be carried out; and the exercise undertaken, of antecedent verification, was a mere ritual, an empty formality and did not satisfy the requirements of the Rules.

14. They would refer to some of the applications in support of their contention that the applications were submitted even before the notification was published on 05.12.2008; some of the applicants had not even sought appointment as trustees; one of them had sought appointment as a Union Leader of the association of temple employees; the rules required an application to be made to the Government despite which the Assistant Commissioner, Chittoor had received the applications and had caused verification of their antecedents; and the impugned order is, therefore, liable to be set aside.

15. On the other hand the Learned Government Pleader for Endowments, and Sri A. Chandraiah Naidu, Learned Counsel appearing on behalf of those appointed as trustees, would submit that in none of these three writ petitions is there any allegation that the respondents, who have been appointed as members of the trust board, suffered from any of the disqualifications stipulated in Act 30 of 1987; all those who had been appointed were respectable members of Sri Kalahasthi town and nearby areas; and the mere fact that antecedent verification of around 100 persons was carried out by the Assistant Commissioner of Endowments, Chittoor in two days did not necessitate the conclusion that such an exercise was a mere ritual and an empty formality as it could not be said that such an exercise of antecedent verification could not be carried out in two days.

16. Rule 4(1) of the A.P. Charitable & Hindu Religious Institutions & Endowments Appointment of Trustees Rules, 1987 (hereinafter referred to as the Trustees Rules), stipulates that the authority, competent to appoint trustees, shall,

forthwith on a report received under Rule 3, cause publication of the notice in Form-I. The notice in Form-I requires interested persons to send their applications for trusteeship in the prescribed proforma, vide Form II of the Trustees Rules, within 20 days from the date of publication of the notification. Since the notification was published on 05.12.2008 the 20 day period, prescribed under Rule 4(1) of the Trustees Rules read with Form I. thereof, expired by 24.12.2008. Rule 5(1) requires the application, for appointment of a trustee, to be submitted in Form II. The said Form-II requires the applicant to state that he is qualified u/s 18 and is not disqualified from being appointed u/s 19 or any other provision of Act 30/87. It is the correctness of this declaration which, under Rule 6(2) of the Trustees Rules, is required to be verified by the officer who is causing verification of the antecedents of the applicants. The said officer is required to cause a discreet enquiry and satisfy himself that the declaration made by the applicants in Form-II is correct, and to submit his report to the competent authority together with the applications. Rule 6(2) read with Form II, in effect, required the enquiry officers, (in the present case the Assistant Commissioners of Endowments, Chittoor and Rajahmundry), to cause a proper enquiry to satisfy themselves that none of the applicants suffered from the disqualifications u/s 19 and that they possessed the qualifications prescribed u/s 18 of Act 30/87. The Trustees Rules casts a duty on the competent authority to cause verification, and the Enquiry Officer to verify, whether or not the applicants satisfied the qualifications, and did not suffer from the disqualification, under Act 30 of 1987 and the Trustees Rules. The contention, urged on behalf of the respondents, that the petitioners had not asserted that the persons appointed as trustees suffered from any disqualification is of no consequence, as the obligation to ascertain these facts is statutorily placed on the competent authority and the Enquiry Officer.

17. Section 18 of Act 30 of 1987 prescribes the qualification of trustees and, there under, a person shall be qualified for being appointed as, or for being, a trustee of a charitable or religious institution or endowment if (a) if he has faith in God; (b) if he possesses good conduct and reputation, and commands respect in the locality in which the institution is situated; (c) if he has contributed for construction, renovation or development of any institution or performance of any utsavam or ubbayam or any charitable cause; (d) if he has sufficient time and interest to attend to the affairs of the institution; and (e) if he possesses any other merit. Section 19, which prescribes the disqualifications for trusteeship, reads as under:

(1) A person shall be disqualified for being appointed as, or for being, a trustee of any charitable or religious institution or endowment:

(a) if he is an undischarged insolvent;

(b) if he is of unsound mind and stands so declared by a competent court or if he is a deaf-mute or is suffering from leprosy or any virulent contagious disease;

(c) if he is interested either directly or indirectly in a subsisting lease of any property or of contract made with, or any work being done for, the institution or endowment or is in arrears of any kind due by him to such institution or endowment;

(d) if he is appearing as a legal practitioner on behalf of or against the institution or endowment;

(e) if he has been sentenced by a Criminal Court for an offence involving moral turpitude, such sentence not having been reversed;

(f) if he has acted adverse to the interest of the institution or endowment;

(g) if he is an office holder or servant attached to, or a person in receipt of any emolument or perquisite from such institution or endowment;

(h) if he is addicted to intoxicating liquors or drugs; (i) if he has not completed (thirty years) of age; (j) if he does not profess Hindu religion in the case of a religious institution or endowment; or

(k) if he has held such office for two consecutive terms.

18. The antecedent verification reports, of the Assistant Commissioners" Chittoor and Rajahmundry, do not reflect verification of all the clauses (Clauses (a) to (e)) of Section 18 of Act 30 of 1987. The Assistant Commissioner, Chittoor has examined the records only to ascertain whether or not the applicants suffered from the disqualifications in Clause (c), (g) and (i) of Section 19 of the Act. Except for a vague statement that the applicants fulfilled the qualifications and did not suffer from the disqualifications stipulated in Act 30/1987 the report of Assistant Commissioner, Chittoor makes no mention of the efforts made, or the information gathered, by him to satisfy himself that none of the applicants suffered from any of the other disqualifications in Clauses (a), (b), (d), (e), (f), (h), (j) and (k) of Section 19 of Act 30 of 1987. The antecedent verification exercise carried out by the Assistant Commissioner, Chittoor does not, therefore, satisfy the requirement of Rule 6(2) of the Trustees Rules.

The Mode and Manner of Appointment of Trustees by the Government falls foul of the Requirements of Act 30 of 1987 and the Turstees Rules - the Impugned Order Stands Vitiated for Non-application of Mind:

19. It is contended on behalf of the petitioners that the impugned order of the Government, in G.O. Rt. No. 313 dated 20.02.2009, suffers from non-application of mind; the Trustees Rules required the Government, which is the competent authority for appointment of trustees of Section 6(a) temples whose annual income exceeds Rupees one crore, to examine the individual merits of each applicant; no independent exercise was carried out in this regard; the competent authority is required under the Trustees Rules not only to take into consideration the qualification/disqualification of the applicants but also to examine the merits of each individual applicant on a rational basis; no rational yardstick has been

laid down by the Government in selecting meritorious applicants for being appointed as trustees; the ten applicants recommended by the Minister, from out of more than hundred applicants, were arbitrarily picked and chosen only because the local M.L.A had forwarded their names; and no exercise to ascertain their individual merit, or their inter-se merit vis-à-vis the other eligible applicants, was undertaken by the competent authority.

20. Section 15 of Act 30 of 1987 relates to appointment of board of trustees and, under Sub-section (1) thereof, in respect of charitable or religious institutions or endowments, included in Clause (a) of Section 6, where the annual income of the institution exceeds Rs. One Crore, the Government shall constitute the board of trustees consisting of nine persons appointed by them. Under the second proviso to Section 15, in the case of a religious institution, the Archaka or, where there is more than one Archaka, the Pradhana Archaka thereof shall be an ex-officio member of the trust board notwithstanding Clause (g) of Section 19(1). The fifth proviso of Section 15 requires one of the members of the board of trustees to be a prominent donor with a long track record of philanthropy and support to hindu religious institutions. Section 17(3) of Act 30 of 1987 stipulates that the procedure for calling for applications for appointment of trustees, verification of antecedents and other matters, shall be such as may be prescribed. Section 17(4) stipulates that no person shall be a trustee in more than one board of trustees.

21. Rule 7 of the Trustees Rules requires the competent authority, on receipt of the antecedent verification report, to scrutinize the applications along with the report of the verifying officer and pass orders appointing the trustees. Under Rule 8, while appointing trustees, the competent authority shall have due regard to the qualifications and disqualifications for trusteeship laid down under the provisions of Act 30 of 1987, and also to consider other merits, enumerated in the said Rule, in selecting the applicants. Rule 8(a) stipulates that one must be (i) service minded, capable of devoting sufficient time to the affairs of the institution or endowment in a spirit of humility and selfless service without any thought of personal gain or aggrandizement; (ii) having interest and faith in the institution or endowment to which he applies for trusteeship; and (iii) normally a resident of the locality enjoying respect and esteem in that area. Rule 8(b) stipulates that appointment of trustees (i) shall be made on a rational basis; (ii) shall not be made with persons having inter-se-relationship; and (iii) shall be from persons belonging to different walks of life.

22. The note file of the Government, (which has been placed for this Court's perusal), records that, among the 10 persons referred to in the letter of the Minister of Information and Public Relations dated 12.2.2009, the applications of 9, other than Smt. T. Vasantha, were received in time. The views expressed by the Commissioner of Endowments, in his letter dated 19.2.2009, are referred to therein. Paragraph 44 to 46 of the note file, which reflects the consideration by the Government in appointing the ten trustees of Sri Kalahastiswara Swamy vari

temple, reads as under:

44. With regard to the appointment of one Archaka as Ex-officio member, the CED (Commissioner of Endowments) has further stated that two Pradhana archakas and three upapradhana archakas are working on honorarium and thus they are not the regular archakas. In the next cadre, i.e., mukhya archakas, there are six mukhya archakas working on regular time scale and they were all appointed on the same date by a common proceedings of the E.O. (Executive Officer). The particulars of their date of birth are as follows:

1 Name of the applicant Designation Date of Date of Sarvasri birth appointment

1. S.M.K. Kalahasteeswar Mukhya 14.12.1964 28.10.1999 Gurukul Archaka

2. S. Kumara Swamy -do- 08.08.1955 28.10.1999 Gurukul

3. P. Pasupathi Gurukul -do- 01.01.1950 28.10.1999

4. T.V. Ravi Gurukul -do- 06.03.1965 28.10.1999

5. V. Karunakara 1 -do 01.10.1961 28.10.1999 Gurukul

6. K. Sambandhan -do 14.1.1968 28.10.1999 Gurukul

45. The Commissioner of Endowments, A.P. Hyderabad has requested the Government to issue suitable orders duly selecting the candidates among the qualified applicants.

46. Submitted that, totally (114) applications have been received by the Government for appointment of Trust Board to Sri Kalahasteeswara Swamy Devasthanam, Srikalahasti, Chittoor District. The antecedents of the applicants may be seen at Flag(M). Further, in every Board of Trustees, there shall be at least one woman member and one member belonging to the Scheduled Castes or the Scheduled Tribes whose population is larger in the concerned village and one member belonging to Backward Classes. Provided that it shall not be necessary to appoint; (a) woman member where any person appointed to represent the Scheduled Castes or the Scheduled Tribes or the Backward Classes is a woman; (b) a member of the Scheduled Castes or the Scheduled Tribes where any woman member appointed belongs to the Scheduled Castes or the Scheduled Tribes; (c) a member of the Backward Classes where any woman member appointed belongs to the Backward Classes....

23. In the said note file, at para 48 and 49, the Joint Secretary to the Government records that the Assistant Commissioners of Chittoor and Rajahmundry had sent the antecedents of 119 applicants among which the antecedents of the 10 applicants shown in page 12 were also included. Nine applicants and 1 Mukhya Archaka, out of the 6 Mukhya Archakas, shown in para 44 were to be selected as the members of the Trust Board to the Sri Kalahasteeswara Swamy Devasthanam. At para 50 of the Note, file, the Secretary, Revenue (Endowments) records:

may please nominate/constitute members from amongst the eligible/qualified applicants for constitution of the Trust Board.

This is endorsed, signed and approved by the Minister of Endowments on 20.2.2009.

24. Section 15 of Act 30 of 1987 confers a discretion, and imposes an obligation, on the Government to appoint trustees of a Section 6(a) temple, whose annual income exceeds Rs. 1.00 crore, such as the Sri Kalahasteeswara Swami vari temple. Discretion is to discern between right and wrong and, therefore, whoever hath power to act at discretion is bound by the rule of reason and law. It is not to be arbitrary, vague and fanciful, but legal and regular. It must be exercised within the limit to which an honest man, competent to discharge his office, ought to confine himself. Union of India (UOI) Vs. Kuldeep Singh, The discretionary power, statutorily conferred, has to be exercised keeping in view the purpose for which it is conferred and the object sought to be achieved. Narendra Singh Vs. Chhotey Singh and Another, ; Clariant International Ltd. and Another Vs. Securities and Exchange Board of India, . A discretionary jurisdiction, furthermore, must be exercised within the four corners of the Statute. State of Kerala and Others Vs. C.M. Francis and Co., ; Clariant International Ltd. and Another Vs. Securities and Exchange Board of India,

25. When a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The Government and other authorities, while exercising their discretionary jurisdiction u/s 15(1) of Act 30 of 1987, are merely creatures of the Statute. They must act within the four corners thereof. Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, ; State of Gujarat Vs. Shantilal Mangaldas and Others, ; State of Gujarat Vs. Shantilal Mangaldas and Others, ; Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, ; Captain Sube Singh and Others Vs. Lt. Governor of Delhi and Others, ; Dhananjaya Reddy v. State of Karnataka 2001 (4) SCC 9. When anything is left to any person, to be done according to his discretion, the law intends it must be done according to law. Union of India (UOI) Vs. Kuldeep Singh, . The authority, conferred the discretion to do an act, must exercise the same strictly in accordance with law and judiciously. Such discretion must be a sound exercise in law. Clariant International Ltd. and Another Vs. Securities and Exchange Board of India, Discretionary power, conferred statutorily on a repository, must also be exercised reasonably, for the legislature is taken to intend that the discretion be so exercised. Kruger v. Commonwealth of Australia (1997) 146 Aus LR 126; Clariant International Ltd. (2004) 8 SCC 131 . The discretion conferred has to be exercised to advance the purpose to subserve which the power exists. Shiv Sagar Tiwari Vs. Union of India and others,

26. Proper and legal exercise of discretion is one where the authority examines the fact, is aware of the law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance, or rules are framed, for exercise of discretion then the action should be in accordance with it.

Bangalore Medical Trust Vs. B.S. Muddappa and others, In the purported exercise of its discretion, the authority must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Bangalore Medical Trust Vs. B.S. Muddappa and others, ; State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo,

27. When a power is exercised for a purpose or with an intention beyond the scope of or is not justified by the instrument creating it, it would be a case of fraud on power. If it be shown that an authority exercising power has taken into account as a relevant factor, something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, such exercise of power would be bad. Barium Chemicals Ltd. v. Co. Law Board 1966 Supp SCR 311. If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations required to be taken into account, the power must be held not been validly exercised (Administrative Law: H.W.R. Waoe & C.F. Forsyth: Ninth Edition).

28. Neither the report of the Commissioner of Endowments dated 19.2.2009, nor the note file of the Government, make any reference to any one, among the selected 10 persons, being a prominent donor with a long track record of philanthropy and support to Hindu Religious institutions as required under the fifth proviso to Section 15 of Act 30/87. It is also evident from the note file placed before this Court that the Government had accepted all the names recommended by the Minister of Information and Public Relations, except that of Sri T. Vasantha (as her application was received beyond the prescribed time limit) and one archaka (as the archaka recommended by the Minister was not among the six mukhya archakas referred to in the letter of the Commissioner of Endowments dated 19.2.2009).

29. No independent exercise, as mandated by Rule 8(a) and (b) of the Trustees Rules, has been carried out by the Government in determining why none of the other nearly 100 applicants, (who even according to the antecedent verification reports of the Assistant Commissioners, Chittoor and Rajahmundry, were eligible to be appointed as trustees), should not be appointed. Appointment of trustees of religious institutions, more so a Section 6(a) temple such as the Srikalahasteeswara swamy vari Devasthanam whose annual income far exceeds Rs. 1.00 Crore, is neither a mere ritual nor an empty formality. It is not a largesse or a bounty to be distributed, without rhyme or reason, to all and sundry.

30. Section 18(e) of Act 30 of 1987, read with Rule 8(a)(i) of the Trustees Rules, requires only service minded persons who can devote sufficient time to the affairs of the temple, that too in a spirit of humility and service without any

thought of personal gain or aggrandizement, to be appointed as trustees. Persons, who are appointed as trustees, must also have interest and faith in the temple and should be respectable and esteemed residents of the locality, (in the present case, of Srikalahasti town). The note file does not even record the Government's satisfaction that those appointed as trustees fulfilled these essential requirements.

31. Rule 8 of the Trustees Rules not only stipulates that appointment of trustees should be from persons who come from different walks of life, but also requires the Government to examine the merits of each of the applicants on a rational basis. The Trustees Rules do not specify what should be the rational basis on which the Government should appoint trustees of a Section 6(a) temple. A public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discretion, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation, and are not arbitrary or capricious. (Halsbury Laws of England Vol. 1, 4th Edn. Para 33; *Shri Rama Sugar Industries Ltd. v. State of A.P.* (1970) 1 SCC 534 . Selection of an appropriate procedure lies ordinarily within the domain of administrative policy, and when the can be fulfilled by more than one constitutionally valid method, the selection must be left to administrative choice. The courts are generally concerned merely with the legal validity of the choice made. *Suman Gupta and Others Vs. State of Jammu & Kashmir and Others*, It is desirable, therefore, to leave it to the State Government to formulate a rational basis, in tune with the statutory prescriptions in Act 30 of 1987 and the Trustees Rules, for appointment of persons as trustees of charitable and hindu religious institutions and endowments.

32. The competent authority, (in this case the Government), was therefore required to lay down a rational yardstick for determining who, among those found eligible for being appointed as trustees on verification of their antecedents, were the most meritorious. Only such of those applicants who not only fulfilled the qualifications prescribed in Section 18 of Act 30 of 1987, the conditions stipulated in the Trustees Rules, and did not suffer from any of the disqualifications stipulated in Section 19 of Act 30 of 1987, but were also found to be the most meritorious among the eligible applicants, (on the application of the rational criteria required to be prescribed by the Government), could alone have been appointed as trustees. Appointment of trustees under the impugned G.O. falls foul of and does not accord either with the provisions of Sections 15, 17, 18 and 19 of Act 30/87 or Rule 8 of the Trustees Rules.

33. In the present case, the Government has appointed the trustees without applying its mind to the relevant statutory provisions both under Act 30 of 1987 and the Trustees Rules. It has not caused a proper antecedent verification of the applicants to ascertain the correctness of the declaration made by them in their applications; has not ensured that they fulfilled the qualifications prescribed in

Section 18 and did not suffer from any of the disqualifications stipulated in Section 19 of Act 30 of 1987; has not independently examined the candidature of each of the eligible applicants to appoint only the most meritorious among them; and has not considered the merits of any of the other eligible applicants, let alone determining their inter-se merit on a rational basis. The impugned G.O. issued by the Government, therefore, suffers from non-application of mind.

Appointment of Trustees: did the Government act at the Dictates of The Minister of Information and Public Relations?

34. It is contended on behalf of the petitioners that the trustees were appointed merely at the dictates of the Minister for Information and Public Relations; and the very fact that persons, referred to in the letter of the said Minister dated 12.02.2009, have been appointed as trustees is proof that the competent authority had merely acted at his dictates, and had not independently exercised its mind. Reliance is placed by them on the judgment of this Court in *Thani Polaiah v. Engilala Ramanaiah* 1997 (1) An.W.R. 316.

35. On the other hand both the Learned Government Pleader and Sri A. Chandraiah Naidu would submit that not all the ten persons recommended by the Minister were appointed as trustees; the lady appointed as a trustee was not the same as the one recommended by the Minister; and this, by itself, was proof that the competent authority had exercised its mind independently in the appointment of trustees of the Sri Kalahasthiswaraswamy Devasthanam, and not at the Minister's dictates; and recommendation by a public representative did not justify an inference that the competent authority was acting at his dictates without independent application of mind;

36. Discretion conferred by law must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; and it must not act under the dictates of another. Where an authority hands over its discretion to another it acts ultra vires. *State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo*, ; *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, When applied to public functionaries, "discretion" is the power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. *Union of India (UOI) Vs. Kuldeep Singh*, Where the proper authority allows someone else to dictate to it, submitting to their wishes or instructions, the effect is that the discretion conferred by the statute/statutory rules is exercised by the wrong authority, and the resulting decision is ultra vires and void (*Administrative Law: H.W.R. Waoe & C.F. Forsyth: Nith Edition*).

37. In *Tani Polaiah* 1997 (1) An. W.R. 316 the competent authority to appoint trustees, for two temples in Nellore District, was the Assistant Commissioner of Endowments. Most of those recommended by the Minister were appointed, by the Assistant Commissioner, as trustees. On these appointments being subjected

to challenge, this Court observed that the Trustees Rules required the Assistant Commissioner of Endowments to consider the merits and demerits of the applicants in accordance with Rule 8; the Assistant Commissioner had acted at the dictates of the Minister and had abdicated the statutory duty vested in him in law; the statute did not confer any authority on the Minister in the appointment of trustees; the Government itself had no authority to interfere with the statutory duty of the Assistant Commissioner in appointment of trustees; and when the Legislature had, in its wisdom, empowered the Assistant Commissioner to appoint trustees, the Minister could, at best, project his men as suitable persons but could not direct the Assistant Commissioner to form the trust board of both the temples with such men. This Court further observed that the Minister had written letters of recommendation only to be received and acted upon; the letters were in fact acted upon and the persons proposed by the Minister had been appointed; and, since the Assistant Commissioner had passed the impugned order appointing trustees of the two temples only in compliance with the directions of the Minister without applying his mind in considering their merits vis-a-vis the merits of other applicants including that of the petitioners as per Rule 8 of the Trustees Rules, the order of appointment was vitiated.

38. While public representatives, be they MLAs or Ministers, may be entitled to recommend persons whom they consider to be entitled for appointment as trustees of religious institutions, neither can they dictate that these persons be appointed as trustees nor can the competent authority surrender its discretion and abdicate its statutory duty of appointing only those persons as trustees who satisfy the conditions prescribed in Act 30 of 1987, and the Trustees Rules. Only those recommended by the Minister of Information and Public Relations, as forwarded to him by the local M.L.A. (other than the two who were found ineligible), have been blindly appointed as trustees without adhering to the statutory provisions of Act 30 of 1987 or the statutory rules i.e., the Trustees Rules, 1987. Appointing those recommended by the Minister as trustees is evidently at his dictates, and reflects surrender of discretion and abdication of duty by the competent authority. The impugned G.O, appointing only those recommended by the Minister for Information and Public Relations, as trustees without independent exercise of mind is ultravires the provisions of Act 30 of 1987 and the Trustees Rules and must, therefore, be set aside.

MALICE:

39. It is contended on behalf of the petitioners that the impugned G.O. is vitiated by malice in as much as the Minister had recommended those persons, whose names were forwarded by the local M.L.A, even prior to verification of their antecedents and had ensured their appointment in violation of the provisions of Act 30 of 1987, and the Trustees Rules; trustees were appointed only from amongst those recommended by the Minister of Information and Public Relations in his letter dated 12.02.2009, though the said Minister was not the Minister of Endowments, and was not entitled either to recommend or direct that

a particular person should be appointed as a trustee; though Sri M. Ravichandra Reddy had submitted his application on 17.2.2009, more than one and half months after the cut-off date of 24.12.2008, his application was ante-dated and the Minister of Endowments made an endorsement thereon dated 19.12.2008, only to create an impression that the said application was received in time; and, as no counter affidavit has been filed either by the Minister or the Principal Secretary (Revenue - Endowments), both of whom have been arrayed as parties eo-nominee, the allegations of malice stand uncontroverted, and the impugned order is required to be set aside as being vitiated by malice.

40. On the other hand both the Learned Government Pleader for Endowments and Sri A. Chandraiah Naidu would submit that the letter of the Minister dated 12.02.2010 is merely a request that the candidates mentioned therein be considered for appointment as members of the trust board; no malice could be attributed either to the Minister or to the Principal Secretary merely because the Minister had recommended the names of certain persons and the competent authority had considered their candidature; and the application of Sri M. Ravichandra Reddy was not antedated.

41. As noted hereinabove, both the Minister of Information and Public Relations and the Principal Secretary (Revenue), are arrayed as respondents eo-nominee. Despite notices being served, neither of them have filed their counter affidavits denying the allegations. If allegations of malafides are made in proceedings under Article 226 of the Constitution of India, and such allegations are not controverted in an affidavit by the party against whom they are made, the Court may accept such allegations to be correct. *S.B. Dwarkanath and The Registrar, Osmania University Vs. R. Dilip Kumar and Others*, In the absence of such affidavits, or of materials placed before the Court by these authorities, the Court is left to judge the veracity of the allegations merely on the test of probability with nothing more substantial to answer. *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*,

42. The allegations of malice against the Minister of Information and Public Relations are that he had recommended candidates, whose names were forwarded by the local M.L.A. even prior to verification of their antecedents, and had ensured their appointment as trustees in gross violation of the provisions of Act 30 of 1987, and the Trustees Rules.

43. Malice must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, The burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. *E.P. Royappa Vs. State of Tamil Nadu and Another*, ; *Swaran Lata Vs. Union of India and Others*, He who seeks to invalidate or nullify any act or order must establish the charge of bad faith. While the indirect motive or purpose, or bad faith or personal ill-will, is not to be held established except

on clear proof thereof, it is obviously difficult to establish the state of a man's mind, though this may sometimes be done *Edgington v. Fitzmaurice* (1884) 29 Ch. D459. The difficulty is not lessened when one has to establish that a person in the position of a Minister has been acting malafide in the sense of pursuing an illegitimate aim. Malafide, in the sense of improper motive, should be established only by direct evidence, that is it must be discernible from the order impugned or must be shown from the nothings in the file which preceded the order. If bad faith would vitiate the order the same can be deduced as a reasonable and inescapable inference from proved facts. *S. Pratap Singh Vs. The State of Punjab*, Though the burden of proving that there is an abuse of power lies on the person who challenges the order, such burden is not by way of proof to the hilt but such as will render the absence of bonafides reasonably probable. *Ratanlal Gupta v. District Magistrate of Ganjam* ILR 1951 Cut 441; *Brundaban Chandra Dhir Narendra v. State of Orissa (Revenue Department)* ILR 1952 Cut 529. It will then be incumbent on the authority to explain the circumstances under which the order has been made. The court will, in that event, scrutinize these circumstances and, if it is not satisfied that the order was made by the authorities in bonafide exercise of power, it will quash the same. The standard of satisfaction which would have to be attained will necessarily depend on the circumstances of each case and the court will arrive at the conclusion one way or the other having regard to all the circumstances of the case disclosed in the record. *Pannalal Binjraj Vs. Union of India (UOI)*,

44. From among the ten persons, referred to in the letter of the Minister of Information and Public Relations dated 12.2.2009, the names of Smt. T. Vasanta and Sri Sadasiva Gurukul do not find place in the impugned G.O. Smt.T. Vasanta's name was omitted since the application submitted by her was received after the cut off date of 24.12.2008 i.e, on 27.12.2008 and Sri S.M.K. Kalahastheeswara Gurukul was appointed in the place of Sri S.M.K. Sadasiva Gurukul, as the former was a mukhya archaka. The names of the other 8 persons, referred to in the letter of the Minister of Information and Public Relations dated 12.02.2009, find place in G.O. Ms. No. 313 dated 20.2.2009.

45. In support of their contention that the impugned G.O. is vitiated by malice it is also contended on behalf of the petitioners that the application of Sri M. Ravichandra Reddy, one of those appointed as trustees, was ante-dated. The said application contains the seal of the Government and the date mentioned therein is 17.2.2009 which is nearly two months after the cut off date i.e., 24.12.2008. The endorsement of the Minister for Endowments on the said application is, however, dated 19.12.2008. As noted hereinabove, all the applications were sent by the Government to the Commissioner of Endowments on 27.1.2009 for causing verification of antecedents, and in turn the Commissioner sent them for verification to the Assistant Commissioners, Chittoor and Rajahmundry vide proceedings dated 10.2.2009. It is only thereafter did the Minister, vide letter dated 12.2.2009, recommend the names of ten persons including that of Sri M. Ravichandra Reddy. The Government, vide letter dated 17.2.2009, requested the

Commissioner to verify whether the applications of the 10 applicants, referred to in the letter of the Minister dated 12.2.2009, had been received by him in time and to furnish his remarks, along with the antecedents of the applicants including those of the 10 applicants. The Assistant Commissioner, Chittoor forwarded his enquiry report on the antecedents of each applicant along with his letter to the Commissioner dated 18.2.2009. In the said report he records that the Commissioner, vide letter dated 10.2.2009, had forwarded 97 consent letters of persons who had applied for trusteeship of the Sreekalahasthi Swamy Vari Temple for a period of two years in response to the notification issued by the Government in G.O. Rt. No. 2121 dated 18.11.2008, and had instructed him to submit the antecedent verification report. He also stated that he had been to Srikalahasthi on 17th and 18th February, 2009. While giving details of the antecedent verification of the 97 applications forwarded to him by the Commissioner of Endowments, the Assistant Commissioner, Chittoor records that, when he was verifying the antecedents of residents of Srikalahasthi, he received three applications including that of Sri M. Ravichandra Reddy by fax.

46. The submission of Sri P. Gangaiah Naidu, Learned Senior Counsel appearing on behalf of the petitioners, that Sri M. Ravichandra Reddy had, in fact, submitted his application on 17.2.2009, and that the endorsement of the Minister of Endowments is ante-dated as 19.12.2008 only to show that Sri M. Ravichandra Reddy had submitted his application before the cut off date of 24.12.2008, cannot be brushed aside. If the Minister of Endowments had really made his endorsement on 19.12.2008, the said application should have been received by the Government prior thereto. If the application of Sri M. Ravichandra Reddy had been received prior to 19.12.2008 it ought to have been forwarded by the Government, along with the other applications, to the Commissioner of Endowments on 27.1.2009 and the Commissioner, in turn, should have forwarded the said application, along with other applications, to the Assistant Commissioner, Chittoor on 10.2.2009. The note file makes no mention of the application of Sri M. Ravichandra Reddy having been misplaced. It is also silent on the question as to why the said application, supposed to have been received on or prior to 19.12.2008, was not sent by the Government to the Commissioner of Endowments, and was not sent by the Commissioner of Endowments to the Assistant Commissioner, Chittoor, along with the other applications; or why it had to be sent, as late as on 18.02.2009, by fax to the Assistant Commissioner, Chittoor. The letter of the Government dated 17.2.2009 asking the Commissioner of Endowments to ascertain whether the applications of the 10 persons referred to in the letter of the Minister of Information and Public Relations, (among whom Sri M. Ravichandra Reddy finds place), were received and the fact that the Assistant Commissioner, Chittoor records that he had received a copy of the application of Sri M. Ravichandra Reddy by fax when he was at Srikalahasthi on 17th and 18th February, 2009 does give rise to a strong suspicion that the application of Sri M. Ravichandra Reddy was received by the Government only on 17.2.2009 much beyond the cut off date of 24.12.2008.

47. It may be that certain circumstances might create suspicion, perhaps a strong suspicion, but it is trite to say that suspicion, however grave, cannot substitute evidence. An allegation as to bad faith or indirect motive or purpose cannot be held established except on clear proof thereof. *Barium Chemicals Ltd.* 1966 Supp SCR 311. As the impugned G.O. is being set aside for violation of the statutory provisions of Act 30 of 1987 and the Trustees Rules, abdication of duty and non-application of mind by the competent authority i.e., the Government, I do not consider it necessary to delve any further on the question whether the impugned order is also required to be set aside on the ground of malice.

48. The impugned order of the Government, in G.O. Rt. No. 313 dated 20.02.2009, is quashed. The writ petitions are, accordingly, allowed. However, in the circumstances, without costs.

That Rule Nisi has been made absolute as above witness the Hon''ble Sri Nisar Ahmed Kakru, The Chief Justice on this Tuesday the Twenty Second day of June, Two Thousand and Ten.