

(2001) 11 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 19279, 19280, 19281 and 19888 of 2001

Sametha Panduranga Swamy Temple, Amaravathi Village,
Guntur District

APPELLANT

Vs

Principal Secretary to Government of Andhra Pradesh and
Others

RESPONDENT

Date of Decision : 02-11-2001

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966
— Section 38
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 1(3), 154, 155, 155(2), 17
Constitution of India, 1950 — Article 19(1), 24, 25, 26, 31
Waqf Act, 1954 — Section 83

Citation : (2002) 2 ALD 177

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : D. Hanumantha Rao and Darsi Sudhakara Rao, for the Appellant;
Government Pleader for Endowments, for the Respondent

Judgement

S.B. Sinha, C.J.—The sole question to be answered in these writ petitions is whether an Executive Officer can be appointed in terms of Section 29 (5) (d) of the A.P. Charitable Hindu Religious Institutions and Endowments Act, 1987 ("1987 Act" for brevity) by the respondents to the petitioners"-temples, or not?

2. The petitioners-temples and/or charitable institutions or endowments herein are questioning:", the action of the Deputy Commissioner appointing a Person-in-,Management by passing an order in proceedings Rc.No.G2/46605/2001-23, dated 31-08-2001 to exercise the powers, perform the function and discharge the duties of Executive Officer of Sri Venkateswara S.T., Vykuntapuram (V), Amaravathi (M), and other Institutions, Guntur District in exercise of the powers vested in him u/s 29(5)(d) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. For the purpose of convergence the facts leading to filing of these writ petitions are noticed from WP No. 19279 of

2001.

3. In this writ petition, the petitioner-temple inter alia prays for the following reliefs:

... to declare the Arya Vysya Community as a Hindu Religious Denomination entitled for protection conferred under Article 26 of the Constitution of India with a right to establish and maintain religious institutions charitable trusts and by enjoying the sole right of management both financial and administrative in respect of Sri Rukmini Sametha Panduranga Swamy Temple, Amaravathi Village and Mandal, Guntur District and issue an appropriate writ, order or direction, more particularly in the nature of a Mandamus declaring the action of the respondents in appointing the "Person-in-Management" to Sri Rukmini Sametha Panduranga Swamy Temple, Amaravathi Village and Mandal, vide Proceedings No.G2/46605/2001-23 dated 31-08-2001, as illegal, arbitrary and irregular exercise of power and contrary to the letter and spirit of Article 26 of the Constitution of India and in flagrant violation of principles of natural justice and pass such other further or other order or orders as this Hon"ble Court may deem fit and proper in the circumstances of the case. Else the petitioner would suffer great irreparable loss and injury.

4. The petitioners"-temples are Arya Vysya Temples situate at several places. Arya Vysya is said to be a religious denomination in terms of Article 26 of the Constitution of India. This aspect of the matter was considered by a Division Bench of this Court in LPA No. 16 of 1979 dated 08-11-1985. The matter was carried to the apex Court (see: Sri Kanyaka Parameswari Anna Satram Committee and Others Vs. The Commissioner, Hindu Religious and Charitable Endowments Deptt. and Others, . Therein, the apex Court had the occasion to consider as to whether Kanyaka Parameswari Anna Satram Committee and temple are institutions of religious" denominations within the meaning of Article 26 of the Constitution of India and the apex Court held that the institution will come within the purview of religious denomination., The apex Court, however, having regard to the fact that the question as regard the effect of appointment of an Executive Officer in the light of Article 26 of the Constitution of India had not been decided by the High Court,, remitted the matter back to this court stating:

It cannot be denied that among the religious institutions denominational institutions stand on a different footing and enjoys special protection under Article 26 of the Constitution. Therefore, while considering the challenge to the appointment of an Executive Officer, it is essential to bear in mind the protection given under Article 26 of the Constitution, which the High court failed to do. In the circumstances, we are of the view that instead of ourselves going into that, we consider it appropriate to remand the matter to the Division Bench to hear and dispose of the case on that aspect. While accepting the finding, which has not been challenged by the respondents that the appellant-institute is a denomination one, the High Court will decide the legality of the appointment of the Executive Officer particularly in the light of Article 26 of the Constitution and

the decisions of this court referred to earlier.

5. The learned Counsels for the petitioners would submit that as observed in Sri Kanyaka Paameswari Anna Satram Committee (supra) the apex Court in Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others, , declared Kakinada Annadana Samajam as an institution of religious denomination within the meaning of Article 26 of the Constitution of India. In the aforementioned decision, the validity of the main provisions of the Act was challenged on the ground that the office of the hereditary trusteeship was "property" within the meaning of Article 19(1)(f) of the Constitution and that these provisions were ultra vires and void as violative of that article, as also of Articles 14, 25, 26 and 31 of the Constitution.

6. In the said case, writ petitions were filed before this Court stating that Nalam Choultry and Vysya Seva Sadanam are private trusts which are doing charity to the people. The object of the charity were: (1) to impart education and training in handicraft to women; (2) to feed poor girls; (3) provide free shelter to women students and (4) run Women's Sanskrit School. At no time, there had been any complaint about mismanagement of the aforesaid trust. Among the objects of some of the Choultries, performing of Pujas in temples was also included.

7. The Court held that the office of hereditary trustee was "property" within the meaning of Article 19(1)(f) of the Constitution of India, It was, however, held that the impugned provisions only imposed reasonable restrictions on the exercise of the right of the trustees, in the interest of general public and good administration of the public institution. It was further found that none of the impugned provisions were violative of Articles 14, 19(1)(f), 25, 26 and 31 of the Constitution. The material provisions of the Act were only intended to regulate and ensure proper, efficient and better administration and management of the institution. The apex Court has affirmed the judgment of the High Court.

8. It is not in dispute that Arya Vysya Community is a part of Hindu community. However, Kanyaka Parameshwari along with 103 gotrikas are said to have sacrificed their fives and their descendants are said to be a different sect.

9. The contention of the petitioners is that keeping in view the fact that the community had been declared to be having religious denomination, the temples .or any other charitable institution constituted by them would come within the protective umbrella of Article 26 of the Constitution of India and in that view of the matter they cannot be deprived of their constitutional rights of managing their own property as is envisaged under Clause (d) of Article 26 of the Constitution of India.

10. Drawing our attention, to Section 29(5)(d) of the Act, which reads:

(d) Where there is no Executive Officer in respect of any Charitable or Religious Institution or Endowment, the trustee or the Chairman of the Board of Trustees or any employee of any Institution or Endowment duly authorized by the

Commissioner in this behalf shall exercise the powers to perform the functions and discharge the duties of an Executive Officer.

The learned Counsels would contend that amendment of Section 29 (5)(d) of the said Act has no application to an institution belonging to religious denomination. In any event, contends the learned Counsel, appointment of Executive Officer cannot be automatic. Reliance in this connection has been placed on a decision of the apex Court in Pavani Sridhara Rao Vs. Govt. of A.P. and Others, .

11. The learned Government Pleader appearing on behalf of the respondents on the other hand would submit that no material has been placed before this Court to show that the petitioners herein belong to the religious denomination. The learned Government Pleader would also contend that the said Act will apply to all religious and charitable institutions. Our attention in this connection has been drawn to Various provisions, including Section 17 of the Act wherein the procedure for making appointments of trustees and their term has been laid down.

12. It was submitted that in any event only because a person belonging to a religious denomination has constructed a temple, the same by itself cannot be approved that it had been done with for the purposes mentioned in Article 26 of the Constitution of India and not for the general public.

13. The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 was enacted to consolidate and amend the law relating to administration and governance of charitable as well as Hindu religious institutions and endowment in the State of Andhra Pradesh. The said Act applies to the whole of the State of Andhra Pradesh. Sub-section (3) of Section 1 reads:

It applies to--

(a) all public charitable institutions and endowments, whether registered or not, in accordance with the provisions of this Act, other than Wakfs governed by the provisions of the Wakfs Act, 1954.

Explanation :--In this clause, the expression "public charitable institutions and Endowments" shall include every charitable institution or endowment the administration of which is for the time being vested in any department of Government, or civil Court, Zilla Praja Parishad, Municipality or local authority, or any company, society, organisation institution or other person;

(b) all Hindu public religious institutions and endowments whether registered or not in accordance with the provisions of this Act.

14. Applicability of the said Act, therefore, can be sub-divided into two parts: (1) public charitable institutions and endowments; and (2) Hindu public religious institutions and endowments.

15. "Charitable endowments" have been defined in Section 2 (3) to mean:

All property given or endowed for any charitable purpose:

Explanations appended thereto read thus:

1. Any property which belonged to or was given or endowed for the support or maintenance of a charitable institution or which was given, endowed or used as of a right for any charitable purpose shall be deemed to be a charitable endowment within the meaning of this definition, notwithstanding that before or after the commencement of this Act, the charitable institution has ceased to exist or ceased to be used for any charitable purpose or the charity has ceased to be performed. II. Any Inam granted to a service holder or to an employee of a Charitable Institution for the performance of any charity or service in connection with a charitable institution shall not be deemed to be a personal gift to the service holder or to the employees notwithstanding the grant of ryotwari patta to such service holder or employee under the Andhra Pradesh (Andhra Areas) Inams (Abolition and Conversion into Ryotwari) Act, 1956, but shall be deemed to be a charitable endowment.

"Charitable institution" in terms of subsection (4) of Section 2 means:

any establishment, undertaking, organisation or association formed for a charitable purpose and include a specific endowment and dharmadayam;

16. Section 2 (5) does not define "charitable purpose" but brings, within its fold (a) relief of poverty or distress; (b) education, (c) medical relief; (d) advancement of any other object of utility or welfare to the general public or a section thereof not being an object of an exclusively of religious nature. A charitable purpose would, therefore, in terms of the aforementioned statutory definition excludes such charitable institutions, which he have been established having on object exclusively of religious nature.

17. In terms of the aforementioned definition of charitable purpose, those institutions, which have been established for the advancement of any object of utility or welfare to the general public or a section thereof as also the object of religious nature would come within the purview thereof.

18. Section 43 occurring in Chapter IV of the said Act provides for registration of charitable and religious institutions and endowments. It is not in dispute that Section 43 of the Act is in pari materia with Section 38 of the 1966 Act. Although Act 17 of 1966, as by reason of Section 155 of the Act, has been repealed but notwithstanding such repeal, the old registration would continue in terms of subsection (3) of Section 43 of 1987 Act which reads thus :

Notwithstanding anything in Sub-section (1), no application for registration shall be necessary in the case of any institution or endowment which was duly registered and entered in the book of endowments before the commencement of this Act, under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966.

19. It is not in dispute that the institutions are registered under the said Act or in terms of Section 38 of the 1966 Act. Having regard to the provisions contained in Section 43(3) and Section 155(2), such registration should be deemed to have been made also in terms of the 1987 Act. The petitioners herein have constructed either temple or established charitable institutions. The said institutions would thus come within the purview of the said Act.

20. By reason of Section 87 of the said Act, the Deputy Commissioner has been empowered inter alia to decide a question as to whether an institution of endowment is also the same religious institution of endowment or not. The applicability of the provisions of the said Act is also within the jurisdiction of the said authority. Section 88 of the said Act provides that an appeal shall lie to the District Court against an order passed by the Deputy Commissioner or of the Commissioner. Yet again, by reason of Section 91(ii) of the said Act, a revision petition lies before this Court against an order passed by the appellate authority u/s 88. A forum thus has been created wherein even the, jurisdictional fact can be determined.

21. By reason of Section 93 (1) of the said Act, power has been conferred upon the Government to act suo motu against the order of the Commissioner or Deputy Commissioner of Endowments and the Government can even modify, annul, reverse or remit back for reconsideration. The Government shall however pass any order, prejudicial to any party only after giving him an opportunity of hearing. The Act thus provides another opportunity to the affected parties.

22. Section 154 empowers the Government to exempt from the operation of any of the provisions of the said Act or any of the rules made thereunder. Section 154 reads thus:

154. Exemptions:--The Government may by way of notification, exempt from the operation of any of the provisions of this Act or any of the rules made thereunder--

(a) any charitable institution or endowment the administration of which was or is for the time being vested--

(i) in the Government either directly or through a Committee or Treasurer of Endowments, appointed for the purpose;

(ii) in the official Trustee or in the Administrator General;

(b) any charitable institution or endowment founded for educational purpose or for providing medical relief; or

(c) any institution or endowment which is being well managed by the founder; or

(d) any institution or endowment;

and may likewise vary or cancel such exemption.

23. The submission of the learned Counsel appearing on behalf of the

respondents that the Act not only applies to Hindu religious institutions, but also to the charitable institutions belonging to all the communities appears to be correct. In *Parsi Zoroastrian Anjuman of Secunderabad and Hyderabad and others Vs. Deputy Commissioner of Endowments, Hyd. and others*, , it has been held that even Parsi Zoroastrian Anjuman, which is a minority community, would also come within the purview of the said Act.

24. In *Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another*, , the apex Court observed

It is well known rule of construction that a court must construe a section, unless it is impossible to do so, to make it workable rather than to make it unworkable. In the words of Lord Bramwell, the words of a statute never should in interpretation be added to or subtracted from, without almost a necessity.

25. Yet again, in *Union of India and Anr. v. Deoki Nandan Aggarwal* AIR 1992 SC 96, the apex Court held that the court does not have power to legislate. The apex Court further held:

We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain, and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission, in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities..... Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme will not also come under the principle of affirmative action adopted by Courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power.

26. A declaration to the effect that a particular temple comes within the purview of the religious denomination is essentially a question of fact. No material has been placed before this Court to prove the said fact. Though the respondents have not filed any counter-affidavit, we are of the opinion, having regard to the fact that apart from bald statements made in the writ, affidavit no document has been annexed to the writ petitions in proof of the said statements. We are also of the opinion that it will not be, proper for this Court to issue such a declaration

particularly having regard to the fact that a forum exists where such a question can be determined.

27. In *The Deputy Commissioner of Endowments, Hyderabad and 2 others Vs. Saibaba Samsthanam*, a Division Bench of this Court held:

a temple or mandir dedicated to Shirdi Saibaba is not an exclusively Hindu temple and it seems discussion as to the religion which Saibaba propagated in the above judgment is taken as one parallel to the faith Kabirdas propagated, can it be said that endowments of Kabir Panth are not Hindu endowments and if the endowments to Kabir Panth are Hindu endowments and thus Hindu religious institutions, Sai temples are also Hindu temples...

28. As the correctness or otherwise the said decision was questioned, a Full Bench of this Court in *the Commissioner of Endowments and another v. All India Sai Seva Samaj*, an unreported judgment of the Full Bench in WA No.594 of 1994 held:

We may, however, before advert to the questions raised in this appeal observe that only because society adopts the name of Sai Seva Sadan or professes to follow the preachings of Sai as one of its objects, the same by itself would not take the society out of the purview of the said Act as such societies may be formed by way of cloak or smoke and screen so as to enable it to come out of the rigours of the said Act. Each case, therefore, has to be considered on its own merit. Each case has to be considered having regard to the purport and object of the said Act on its own merit particularly as regards the question as to whether it is a Charitable Institution and Endowment or Hindu Religious Institution and Endowment. The exclusionary clause is a pointer to the fact that even if a society is out of the fold of public charitable institution and endowment although the same may not be so, so far as all Hindu public religious institutions and endowments are concerned. Charitable purpose as defined in Section 2(5) must be read in the definition of charitable endowment as contained in Section 2(3) thereof.

For the purpose of finding out the object and purport of the society for which it has been established, the provisions of Section 2 (5Xd) which only exclude those "exclusively of religious nature" will also have a great role to play.

It has rightly been submitted by the learned Government Pleader that having regard to , the scope and purport of the provisions of the said Act, it cannot be said that the same applies to Hindu Religious Institutions and Endowments only. If that restricted meaning is given, its applicability to all public charitable institutions and endowments would become otiose. It is a well settled principle of interpretation of statutes that the same must be construed having regard to the purport and object thereof and each provision thereof must be given effect to.

29. Having regard to the provisions of Section 83 of the Wakf Act, 1954, a Division Bench of this Court in *Syed Muneer Vs. Chief Executive Officer and*

Others, , held that the Tribunal at the first instance should consider the matter.

30. Yet recently, in *S. Pitchai Ganapathy v. Commissioner, Hindu Religious and Charitable Endowments Department* 2001 (6) Sup 849, the apex Court held that the question as to whether the temple is a private temple or public temple may be determined by an authority under Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

31. Having regard to the facts and circumstances of this case, we are therefore of the opinion that the petitioners may prefer a revision petition before the State Government in terms of Section 93 and Section 154, which may be decided on its own merits. To what extent, in the event it is found that provisions contained in Article 26 of the Constitution of India is applicable in the case of the petitioners, it goes without saying the State stall while considering appointment of the Board or Trustees or the Executive Officer as the case may be take into consideration that the institution belonging to religious denomination should ordinarily be managed by a person belonging to the said community and having regard to the provisions of Article 26 of the Constitution of India. There cannot be any doubt whatsoever that an order of appointment to the post of Executive Officer cannot be passed automatically only because there exists a jurisdiction thereof. In *Pavani Sridhar Rao* (supra) the apex Court held:

However, we may note one contention canvassed by the learned Counsel for the respondents. He submitted that by subsequent order dated 29-3-1979, Respondent 3, Deputy Commissioner, Endowments Department, Guntur, had appointed the appellant as hereditary trustee of the Ashram, that the said order did not survive after the 1987 Act as office of the hereditary trustee was abolished by this Act and that the 1987 Act was upheld by this Court in the case of *Pannalal Bansilal Pitti v. State of A.P.* In our view this aspect is not much relevant at this stage. We are concerned here with the legality of the 1978 order. Even if the office of hereditary trustee was abolished by the 1987 Act, the same could not retrospectively validate the 1978 order. It would of course be open to the respondents to pass appropriate orders under the 1987 Act in accordance with law, so far as the functioning of the present temple is concerned. Exercise of that power on the part of the respondents will not in any way stand affected by the present proceedings and the decision rendered by us herein. If and when such an order is passed under the 1987 Act, it will equally be open to the appellant to challenge it in accordance with law.

32. However, having regard to the fact that a contentious issue had been raised, we are of the opinion that the impugned order of the Deputy Commissioner appointing a Person-in-Management has to be stayed. The petitioners therefore may take appropriate recourse by filing a revision u/s 93 within two weeks from date. They may also make application for staying the operation of order of Deputy Commissioner. Till the disposal of such miscellaneous application for stay by the authority, concerned, the impugned order in the writ petitions shall remain stayed.

33. With the aforementioned observations, the writ petitions are disposed of No order as to costs.