

(2009) 03 KAR CK 0063
In the Karnataka High Court
Case No : Writ Petition No. 11999 of 2006

Sri M. Sanjeev Gowda

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable
Endowments and Others

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Karnataka Government (Transaction of Business) Rules, 1977 — Rule 14 (1), 22 (3), 3 (2)
Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 —
Section 22, 25 (1)

Citation : (2009) ILR (Kar) 2254 : (2009) 3 KCCR 1800 : (2010) 8 RCR(Civil) 308

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : M. Vishwajith Rai and K.N. Jayaprakash, for the Appellant; A.R. Sharadamba, AGA for R-1 and 2, K.M. Nataraj, for R-4 and R-6 to 12, A.G. Holla for B.V. Krishna, for R-5, Vaishali Hegde, for R3 and Pratap Madyasta, for R-14, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—The appointment of the respondent Nos. 4 to 12 as the Members of the Managing Committee of the third respondent - Temple is called Into question in this petition.

2. The background facts of the case in a nutshell are that the third respondent is a famous Temple attracting the devotees from all over the country. The second respondent called for the applications from the aspiring devotees for making appointments to the Managing Committee of the said Temple. In this regard, the notification (Annexure-B) was issued on 28.06.2005. As many as 94 applications were received in response to this notification. On account of the pendency of the matter involving the challenge to the very same notification, the appointments could not be made immediately. On the disposal of the Writ Petition No.

15827/2005 and Writ Appeal No. 3440/2005, the respondent No. 2 issued one more notification dated 10.07.2006 (Annexure-C) calling for the applications. It was made clear in the notification that those who have already responded to the first notification need not apply again. The second notification evoked response from 51 applicants. The respondent Nos. 4 to 12 were appointed as the Members of the Managing Committee of the said Temple vide the first respondent's order, dated 23.08.2006.

3. It is this aforesaid order, which is being assailed before me, by Sri M. Vishwanth Rai, the learned Counsel for the petitioner.

4. I.A. II/2006 is filed for raising the additional prayer for quashing the notification [Annexure-C], dt. 10.07.2006. On hearing the learned advocates appearing for the petitioner and the respondents, I allow the said I.A.

5. Sri Rai has urged the following contentions:

(a) The applications received are required to be verified by the prescribed authority or by an Officer authorised by it in this behalf. In the instant case, there is no scrutiny of applications either by the prescribed authority or by an Officer authorised by It. Sri Rai submits that It is not In dispute that the Temple in question fails In the W category of the notified institutions and therefore, the first respondent Commissioner is the prescribed authority. In this regard, he brings to my notice the two provisions of law contained in Rule 3(2) and 22(3) of the Karnataka Hindu Religious Institutions and Charitable Endowments Rules, 2002 (for short "the said Rules"). They are extracted herein below:

3(2) The Commissioner, the Deputy Commissioner and the Assistant Commissioner shall respectively be the Prescribed Authorities for "A", "B" and "C" category of notified Institutions.

22(3) The nominations received shall be verified by the prescribed authority or by an officer authorized by it in this behalf with regard to the age, qualification, db-qualification, antecedents, etc., and the committee of management may be constituted, as per the provisions of the Act.

(b)(i) Sri Rai submits that the impugned order is passed without jurisdiction. He submits that u/s 25(1) of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, (for short "the said Act") the prescribed authority alone has the competence to constitute the Committee of Management. He draws support from the provisions contained in Section 25(1) of the said Act which are extracted hereinbelow:

25(1) Subject to any general or special order of the State Government there shall be constituted by the prescribed authority a Committee of Management consisting of nine members in respect of one or more notified institutions and different authorities may be prescribed in respect of different class or classes of notified institutions.

(b)(ii) Sri Rai submits that the Commissioner cannot abdicate his decision-making responsibility In favour of the Minister. To show how the whole thing has been done by the Minister (the respondent No. 14 herein), he relies on paragraph 7 of the first respondent's statement of objections.

7. On 22.8.2006, this respondent received an unofficial note from the Private Secretary to the Hon''ble Minister for Fisheries and Muzrai, Government of Karnataka wherein the Hon''ble Ministers after verifying and considering the applications has ordered to appoint the following 9 members to the committee of Management in accordance with law:

1. Dr. M.K. Prasad
2. Sri T. Venkataramana Bhat
3. Sri N. Seetharam
4. Sri K.L Subramanya
5. Smt. Padmavathi U. Kamath
6. Smt Leela Madhava Gowda Jaremane
7. Sri H.N. Mallesh, Hudhinuru, Vanagoor Post, Sakaleshpur
8. Sri Jayaprakash, Kugugodu
9. Sri Seetharam Edapadithaya.

After receipt of the note from the Hon''ble Minister, this respondent verified the bio-data of these 9 members with reference to their applications and it was found that there is no disqualification against them for being appointed as members of the Committee of Management. Accordingly, in view of the powers vested with him u/s 25 of the Act r/w Rule 3 of the Rules of KHRI & CE Rules, 2002 this respondent constituted the Committee of Management consisting of above 9 members in accordance with law. There b no illegality or violation of procedure laid down under the statute as alleged in the writ petition.

(b)(iii) The learned Counsel takes serious exception to the first respondent acting on the "unofficial" note sent by the Minister's Private Secretary.

(b)(iv) Submitting that the first respondent has erred by acting under the Minister's direction, he brought to my notice the Hon''ble Supreme Court's decision in the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, . The relevant portions of the said judgment are extracted herein below:

16. In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law.

The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No Government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. In *Anirudhsinhji Jadeja* - this Court has held that a statutory authority vested with jurisdiction must exercise it according to its own discretion; discretion exercised under the direction or instruction of some higher authority is failure to exercise discretion altogether. Observations of this Court in *Purtabpore Co. Ltd.* are instructive and apposite. Executive Officers may in exercise of their statutory discretions take into account considerations of public policy and in some context policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but they are not absolved from their duty to exercise their personal judgment in individual cases unless explicit statutory provisions has been made for instructions by a superior to bind them. As already stated, we are not recording, for want of adequate material, any positive finding that the impugned order was passed at the behest of or dictated by someone else than its author. Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power u/s 22 has been exercised by the competent authority b suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality u/s 22 of the Act. To say the least, what has been done b not what b expected to be done by a senior official like the Principal Secretary of a wing of the State Government. We leave it at that and say no more on this issue.

(b)(v) He has also relied upon the Hon"ble Supreme Court's judgment in the case of *State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo*, . The relevant portions of the said judgment are extracted herein below:

15. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action b stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It b trite law that exercise of power, whether legislative or administrative, will be set aside if there b manifest error in the exercise of such power or the exercise of the power b manifestly arbitrary see *State of U.P. and Others Vs. Renusagar Power Co. and Others*, At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "*Judicial Review of Administrative Action*", 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which discretion b vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general,

discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it 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. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account and where an authority hands over its discretion to another body it acts ultra vires.

(b)(vi) Nextly, he sought to draw support from the judgment of the Hon'ble Supreme Court in the case of R.S. Garg Vs. State of U.P. and Others, , the relevant paragraph is extracted herein below:

33. A discretionary power as is well known cannot be exercised in an arbitrary manner. It is necessary to emphasise that the State did not proceed on the basis that the amendment to the rules was not necessary. The action of a statutory authority, as is well known, must be judged on the basis of the norms set up by it and on the basis of the reasons assigned therefor. The same cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, see *Mohinder Singh Gill v. Chief Election Commr.*, *Commr. of Police v. Gordhandas Bhanji* and also *Hindustan Petroleum Corporation. Ltd. v. Darius Shapur Chenai*.

(b)(vii) Based on the candid admission made by the respondent No. 1 that the whole exercise of making the appointments in question is on the directions of the concerned Minister and as the said Act and the 2002 Rules framed thereunder do not provide for the appointment of the Members of the Managing Committee of the Temple by the Minister, the appointments are all nullities in the eyes of law.

(c) The last submission urged on behalf of the petitioner is that there was no justification for the issuance of the second notification calling for the applications. It virtually has the effect of extending the time for submitting the applications. This is impermissible, as the earlier applicants are put to disadvantage.

6. Sri A.G. Holla, the learned Senior Counsel appearing for Sri B.V. Krishna for the respondent No. 5 submits that the first respondent Commissioner's uncle was one of the applicants. He therefore sent the letters, dated 07.08.2006 and 10.08.2006 enclosing all the applications received by him to the Government seeking the directions from the Government with regard to the constitution of the Committee of the Management. If the Commissioner were to constitute the Committee of the Management appointing his uncle, it would have suffered from the vice of bias and nepotism. He therefore placed everything before the

Government and the Government is endowed with the power to issue both the general and special directions to the Commissioner u/s 25 of the said Act. He also submits that Business Rules of the Government provide for the exercise of power by the concerned Minister In relation to his department. The learned Senior Counsel further submits that It Is nobody's case that the respondent Nos. 4 to 12 suffer from any disqualification.

7. As far as verification aspect is concerned, Sri Holla submits that the necessary inputs from the Deputy Commissioner were received by the Commissioner and that the same were forwarded to the concerned Minister for taking the decision in the matter.

8. Sri K.M. Nataraj, the learned Counsel for the respondent Nos. 4, 6 to 12 submits, with reference to Section 3(3) of the said Act, that the exercise of power by the Commissioner is subject to the Issuance of the general and special orders by the State Government. Section 3(3) is extracted hereinbelow:

Section 3(3) The Commissioner appointed under Sub-section (1) shall exercise such powers and perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may make, have powers of general superintendence and control for the purpose of carrying out the provisions of this Act in respect of all Hindu religious institutions and charitable endowments in the State, and such superintendence and control shall include the power to pass any order which may be deemed necessary to ensure that such institutions are properly administered and their income is duly appropriated for the purpose they were found or exist.

(emphasis supplied)

9. Sri Nataraj sought to draw support from the unreported decision, dated 15.07.2005 passed by this Court in W.P. No. 6073/2004 and connected cases to contend that the Business Rules permit the concerned Minister to take a decision in relation to his Department. In this regard, the relevant paragraph of the said judgment is extracted herein below:

18. Learned Counsel for the petitioners have raised an objection that the Hon'ble Minister for Revenue has no jurisdiction to pass the impugned order. Having heard the Learned Counsel for the parties on this question, I am of the view that there is no substance on this contention. The Karnataka Government (Transaction of Business) Rules 1977 (for short "Rules") provides for allocation and distribution of business and departmental disposal of business amongst others. Rule 14 of the "Rules" states that a Minister-in-Charge of the Department of Government shall be primarily responsible for disposal of the business pertaining to his department. Again Rule 33 states that the Minister-in-Charge may dispose of all cases arising in Departments under his control. Rule 66 states that all cases relating to acquisition of land under the Land Acquisition Act for any department of the Government shall be dealt with in the Revenue Department. The matter does not fall within the 2nd or 3rd schedule of the

Rules. Therefore, the Hon"ble Minister for Revenue was competent to decide the matter.

10. He also brings to my notice the provisions contained in Section 22(3) of the said Rules, which provides for verification either by the prescribed authority or by an Officer authorised by it.

11. Smt. Sharadamba, the learned Additional Government Advocate appearing for the respondents No. 1 and 2 submits that there is no illegality in the impugned order passed by the respondent No. 1. She has produced the records. The letter, dated 07.08.2006 of the 1st respondent - Commissioner, seeks direction from the Government regarding the constitution of the Management Committee, as one of his relatives Is an applicant.

12. The due verification has taken place on the basis of the Information furnished by the Deputy Commissioner and the applicants themselves. The Minister has directed that the respondent Nos. 4 to 12 be appointed as the members of the Managing Committee of the Temple. The statement of objections filed on behalf of the respondent No. 1 states that the respondent No. 1 has verified the bio-data of the said 9 members with reference to their applications and that it was found that they do not suffer from any disqualification. In view of the first respondent's uncle being one of the applicants and in view of his placing the applications and the Deputy Commissioner's Inputs thereon before the Minister, I do not find any violation of Rule 22(3) of the said Rules. Further on receipt of the note from the concerned Minister's Office, the first respondent satisfied himself that none of the respondent Nos. 4 to 12 suffer from any disqualification. I therefore negative the first submission urged on behalf of the petitioner.

13. The next submission urged on behalf of the petitioner is that the impugned order is without jurisdiction. The factual matrix of the case is such that the first respondent could not have appointed the members of the Management Committee of the Temple, as his uncle was one of the applicants. If the first respondent were to appoint his uncle, it would be an act of nepotism. In the fitness of the things therefore, he referred the matter to the Government and sought its specific directions. Both u/s 3(3) and 25(1) of the said Act, it is open to the State Government to issue general or special directions to the prescribed authority (which in the instant case is the first respondent Commissioner). The letter, dt.07.08.2006 sent by him to the Government contains the tenable reason for referring the matter to the Government and seeking the Government's directions in the matter. The judgments relied upon by Sri Vishwajith Rai have no application for the peculiar facts and circumstances of this case. The first respondent cannot be said to have abdicated his responsibility. He rightly wrote to the Government and acted on the Government's directions. Besides, before Issuing the impugned order constituting the Management Committee, he satisfied himself objectively that the respondent Nos. 4 to 12 do not suffer from any disqualification.

14. To answer the question as to whether the concerned Minister could have exercised the power of directing the Commissioner to appoint the respondent Nos. 4 to 12 as the members of the Managing Committee, it is worthwhile to refer to Rule 14(1) of the Karnataka Government (Transaction of Business) Rules 1997, which is as follows:

14(1) Without prejudice to the provisions of Rules 17 and 21, the Minister-in-charge shall be primarily responsible for the disposal of the business pertaining to his Department.

A plain reading of the above extracted Rule reveals that the concerned Minister can take the decision in any matter pertaining to his Department. In taking this view, I am also fortified by the order, dt.15.07.2005 of this Court In writ petition No. 6073/2004, the relevant portion of which is extracted hereinabove.

15. The third submission urged on behalf of the petitioner also does not commend itself to me. The first notification, dt.28.06.2005 calling for the applications could not be immediately acted upon, as the same was the subject matter of W.P. No. 15827/2005 and later W.A. No. 3440/2005. It is only on their disposal that the process of constituting the Committee had to be resumed. As there was a wide time-gap between the issuance of the first notification (Annexure-B) and the resumption of the appointment process, the first respondent has thought it fit to give one more opportunity to those, who have not responded to the first notification. The second notification makes it dear that those who have responded to the first notification need not apply again. It is not that the applications received in response to the first notification were thrown out. The applications received in response to both the notifications are considered. Therefore the applicants in response to the first notification are not put to any prejudice by the Issuance of the second notification. I do not see any arbitrariness In the issuance of the second notification under the peculiar facts and circumstances of the case.

16. The use of prefix "unofficial" in the note sent by the Minister's Private Secretary is not satisfactorily explained in the statement of objections. However, the use of the expression "unofficial", be it Inadvertent or wanton, the same is not of such a magnitude, in the backdrop of the circumstances of the case, as to dislodge the respondent Nos. 4 to 12 from the Management Committee's membership, which they are holding by virtue of the impugned order.

17. For the aforesaid reasons, I dismiss this petition. No order as to costs.

18. There is no representation for the impleading applicants. As the writ petition itself is being dismissed, no orders on I.A.I/2007 for impleadment are required to be passed.