

(2008) 08 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 13782 of 2007

Sri. Rachayya Hiremath and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Hindu Religious Institutions and Charitable Endowment Act, 1997 — Section 10, 9

Citation : (2011) 4 KCCR 2881

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : Krishna S. Dixit, R.L. Patil, Mahesh B. and B.D. Hiremath, for the Appellant; Mallikarjun C. Basareddy, for Respondent Nos. 5 to 14 and 16 to 18, V.P. Kulkarni, Vagdevi Associates for R.4 and K.B. Adhyapak, G.A. for R.1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Ravi Malimath, J.—It is the case of the Petitioners that they have been functioning as Arachaks in the Respondent Temple since 1992 on adhoc basis. They claim to be eligible and qualified for being appointed as Arachakas in any notified Temple or Institution. They submitted that in pursuance of the judgment dated 22-2-2007 passed in Writ Petition No. 30993/2001, the 3rd Respondent initiated the process for recruitment of Arachakas by Notification dated 6-3-2007 which was published in "Samyuktha Karnataka" newspaper dated 8-3-2007, the Assistant Commissioner, Bailhongal, who was holding the post of Executive Officer of the Temple conducted interviews on 31-4-2007 and 14-4-2007. The Respondent Assistant Commissioner being dissatisfied with the process of selection directed the holding of fresh recruitment of the Arachakas. Accordingly, the 3rd Respondent conducted interview from amongst the 8 banas on 6th and 8th August, 2007 and prepared a list reflecting their performance in the interview and submitted the list to the 2nd Respondent for making the appointment. The 2nd Respondent vide proceedings dated 25-8-2007 appointed the Respondents 5 to 18 as Archakas subject to the condition that they shall obtain necessary

qualifications. Aggrieved by this order the present petition is filed.

2. The learned Counsel for the Petitioner Sri Krishna Dixit, submitted that the appointment of Arachakas is in gross violation of Section 10 of the Hindu Religious and Charitable Institutions Act, 1997. That the persons appointed by virtue of the impugned order lack the qualifications required for such an appointment. In view of the absence of qualification, the relaxation granted by the Respondents to procure the qualifications is not permitted under the Act and hence the impugned order being bad in law deserves to be set aside.

It is further contended that in terms of Rule 12, the Committee of Management would recommend the list of appointees and subject to the approval by the Commissioner, the Committee would make the appointments, but however in the instant case, the appointments having been made directly by the Commissioner by the impugned order is bad in law.

3. The learned senior counsel Sri Jayakumar S. Patil representing the learned Counsel appearing for Respondents 5 to 18 submitted that the Temple is governed by a Scheme which has been reflected in the order passed by the Division Bench dated 6-11-1984 in Writ Petition Nos. 5578/1975, 5974/1975 and 6846/1980. He contends that by virtue of the Scheme and the order of the Division Bench the Poojaris and Sevakarīs of the Temple may be appointed from among the members of 8 banas or branches of Poojaris and the authorities may appoint other persons only in the event of the absence of Members of 8 banas. Therefore, the appointments are in the said terms of the Judgments passed by this Court. He further submitted that there is no violation of Section 10 of the Act in as much as Respondents 5 to 18 have been performing the functions as Archakas in the tradition of the Temple for the last 3 years. Therefore so far as qualification is concerned their qualification for appointment is in terms of Section 10. That the impugned order vide Annexure-G is not an appointment order. The impugned order of appointment is Annexure-R5 and therefore the challenge to Annexure-G being misconceived, the petition should be rejected.

4. The learned Government Advocate Sri K.B. Adhyapak, appearing for Respondents 1, 2 & 3 submitted that the appointment has been made in terms of the order of the Division Bench and in terms of the Act and hence the impugned order does not call for any interference.

5. Sri V.P. Kulkarni, learned Counsel appearing for Respondent No. 4 submits that the appointment has been made by virtue of the promulgation of the new Act. Therefore, the Scheme under which the Temple was being administered and the consequential orders passed by the Division Bench would not be applicable to any appointment by the Temple. He submits that the Temple being governed by the new Act. Sections 9, 10 and the procedure enunciated in Rule 12 needs to be complied with. Failure of such compliance therefore render the impugned order bad in law.

6. I have heard the learned Counsel appearing on all the sides.

7. This Court has passed an order on 2-4-2007 in Writ Petition No. 30993/2001 following the judgment of the Division Bench of this Court dated 6-11-1984 passed in W.P. No. 5578/1975, 5941/1975. In terms of the said order and in pursuance of the said Scheme which governs the Temple the proceedings have been initiated and the impugned order has been passed. The Division Bench of this Court has struck down the Hindu Religious and Charitable Endowments Act. The Petitioner contends that the same has been challenged before the Supreme Court and that an interim order of stay has been granted. A copy of the stay order has not been produced to substantiate the claim. There is no direction or order issued by the Hon''ble Supreme Court, that the Act will continue to hold the field. The Temple therefore would be governed on such terms as prevalent prior to the enactment of Karnataka Act 33 of 2001 and would be governed by the Scheme and as enunciated in the order of the Division Bench of this Court dated 6-11-1984. The Hon''ble Division Bench of this Court after hearing both the sides has passed an order which reads as follows:

After these writ petitions were heard at some length, we suggested to the learned Counsel appearing for the parties as to why these matters should not be disposed of in the light of the suggestions made by us. We suggested that the poojaries and Sevakaries of Sri. Yellamma Temple, Saundatti may be appointed from among the members of 8 banas or branches of Pujaries and that the authorities may appoint outsiders only in the event of fit and suitable persons from among the members of the banas or branches not being available for being appointed to the respective posts. So far as the terms and conditions of the persons to be appointed either as Pujaries or as Sevakaries are concerned, they should of course be governed by the relevant statutory provisions and the scheme framed thereunder. After considering these suggestions the learned Counsel for the Petitioner, the learned Counsel for the Board of Trustees for the Administration of Sri Yellamma Temple, and the learned Government Advocate rightly and fairly submitted that there should not be any difficulty in accepting the suggestions made by the court. In the light of the assurance given by the learned Counsel for the Respondents that they are agreeable for the aforesaid suggestion Sri V. Krishna Murthy, learned Counsel for the Petitioner in all these cases, rightly and fairly submitted that the said assurance may be recorded and the petitions may be dismissed as withdrawn in the light of the assurance given by the Respondent as aforesaid. Recording the assurance given by the Respondent as aforesaid, these writ petitions are dismissed as withdrawn.

8. Two decades later a learned Single Judge by the order dated 2-2-2007 passed in writ petition No. 30993/2001 after considering the order of the Division Bench referred to above held as follows:

10. The fact remains the preference should be given to appoint the poojaries for the temples at Yellamma Gudda from in view of the undertaking by the Respondent/authority before the division bench of this Court, they may have to adhere to the same in giving priorities to the people from among 8 banas and if

in case fit and suitable persons are not available then only other qualified outsiders would be appointed. Even in future as and when vacancy arises preference should be given to 8 banas. The Respondent/authority shall take action to appoint archaks within three months from the date of receipt of this order as indicated above.

The impugned order herein refers to the order passed by this Court while passing the impugned order. Since the impugned order has been passed in terms of the order passed by the Division Bench and the applicability of the Scheme, there is no infirmity in the impugned order. Admittedly, the persons appointed by virtue of the impugned order belonging to the 8 banas and hence the impugned order does not call for any interference.

9. Subject to the final decision by the Hon"ble Supreme Court of India, the Temple would have to be governed in such a manner and by such procedures as was being done in the past Admittedly, prior to the introduction of the Act, the Temple was being managed and run in terms of the Scheme. Therefore, the Scheme and the order passed by the Division Bench would be followed in so far as management of the Temple is concerned. Therefore, on this ground the impugned order cannot be found fault with.

10. The learned Counsel for the Petitioners submitted that the provisions of Section 10 of the Hindu Charitable & Religious Act, 1997 have been violated. Section 10 of the Act reads as follows:

10. Qualifications for Archakas -(1) No person shall be appointed to be a Archaka unless he has passed atleast a certificate course (Wara) in the Agama in the tradition of the temple, from any recognised Sanskruta Patashala or any other institution as the State Government may by notification in the official gazette specify, or has performed as archaka in the tradition of the temple for at least three years.

(2) xxxx xxxx xxxx

(3) xxxx xxxx xxxx

Even assuming the provisions of Act are applicable, it can be seen that one of the qualifications required for appointment of Arachakas is that he should have performed the functions of Arachaka in the tradition of the Temple for the last 3 years. It is an undisputed fact that Respondents 5 to 18 have been functioning as Arachakas in the tradition of the Temple for the last 3 years. Hence, this ground urged by the Petitioners is unsustainable.

11. The learned Counsel for the Petitioners submitted that the appointment is in violation of Rule 12 of the Hindu Religious and Charitable Endowments Act In terms of Rule 12, the Managing Committee or the Executive Officer shall after selection in terms of the said Rule send a select list along with the Records to the Commissioner for his approval. The Commissioner after examining the same could either approve, modify or reject the select list for reasons to be recorded.

After receiving the approval from the Commissioner the Chairman of the Committee of the Management may issue orders of appointment. It is contended that in the instant case, the list as approved by the Committee of Management has not been approved and whereas the Commissioner has prepared his own list and selected the appointees.

The Committee of Management has been under the control and Jurisdiction of an administrator appointed in the year 2004. The Committee of Management is therefore represented by the 3rd Respondent. The purpose of preparation of the select list of candidates by the Committee of Management is to ensure a democratic set up in the process of appointment. The State, herein represented by the Commissioner and the Administrator therefore would not have any unbridled rights in the matter of appointment of Archakas. It is the Committee alone that has exclusive power and jurisdiction to select the candidates. The 2nd Respondent - Commissioner has a restricted power to approve, modify or reject. He does not have the power to appoint. However, in the instant case, the Temple is being administered by the Administrator viz., the 3rd Respondent who is a functionary of the State. The power exercised by the 3rd Respondent is the power that should be exercised by the 4th Respondent in terms of the Act. Since the 4th Respondent is being managed by the 3rd Respondent Administrator the list prepared by him would in law represent the list prepared by the 4th Respondent. Therefore, the impugned order appointing Respondents 5 to 18 by the 2nd Respondent cannot be held to be bad on the ground that the Committee has not recommended the said list. As noted earlier the intent of Rule 12 is to ensure not only a democratic set up but also to control the right to appoint Archakas by the 4th Respondent alone. In view of the appointment of the Administrator, the issuance of the impugned order by the 2nd Respondent is therefore valid in law. Therefore, in view of the fact that the Administrator is running the Temple in the absence of the Committee of Management, the provisions of Rule 12 would not be applicable in the present case. Therefore, even assuming that the Rules are applicable the contention that there is a violation of Rule 12 is unsustainable.

12. The learned Counsel appearing for the State relied on his statement of objections, which reads as follows:

7. It is further submitted that the impugned order has been passed keeping in view the directions of the Hon'ble High Court to give preference to the candidates from the eight banas. xx xx xx xx xx"

XX XX XX XX XX XX

9. It is further submitted that since the Respondent No. 2 is the competent authority for the approval of appointment, he has every authority to impose condition in the appointment with regard to the qualification for the time being keeping in view the High Court directions in the connected writ petition No. 30993/2001.

The State, therefore, is not clear with regard to the applicability of the Act. On the one hand, they contend that the impugned order has been passed in view of the direction of this Court and on the other hand that the second Respondent being the competent authority was entitled to pass the impugned order. If the Division Bench order is being followed, then it pre-supposes that the Act is not in force. However, if the provisions of the Act are in force, only then would be the competent authority have jurisdiction to pass orders and in which event, the compliance or otherwise of the order of this Court does not arise for consideration. Hence there appears to a fluid situation with regard to the applicability of the Act.

In the absence of any specific direction by the Hon'ble Supreme Court of India, in the petition challenging the constitutional validity of the Act, in terms of the statement of objections filed, it is not clear to the State with regard to the enforcement or otherwise of the Act. In this view of the matter, it is therefore appropriate that during the interregnum, pending final adjudication by the Hon'ble Supreme Court, the State was well within its authority to pass the impugned order in terms of the earlier judgment rendered by this Court. The impugned order having been passed in terms of the judgment passed by this Court, therefore, does not call for any interference. Neither is it the case of the Petitioners that there is a violation of the orders passed by this Court. In view of the situation regarding the enforcement or applicability of the Act, the impugned orders passed by the State, in terms of the order passed by this Court, therefore should be held to be just and proper. Hence, the contention of the Petitioners that there is violation of Section 10 of the Act and Rule 12 of the Rules does not arise for consideration at all. The consideration of the violation of the Act and Rules arises only when the Act is in force and is made applicable. In view of the aforesaid reasons, pending final adjudication by the Hon'ble Supreme Court of India, the impugned orders passed by the State in terms of the order passed by the Division Bench of this Court is, therefore, valid and does not call for any interference.

13. The learned Counsel appearing for Respondents 5 to 18 vehemently contended that the impugned order at Annexure-G is not the appointment order. On the other hand, he contended that the appointment order is the appointment order produced by Respondents 5 to 8 vide Annexure-R5. Therefore, since the appointment order vide Annexure-R5 has not been challenged, the petition being misconceived should be rejected. It is to be noted that throughout the statement of objections filed by Respondents 5 to 18 they have specifically and consistently pleaded that the impugned order Annexure-G is the order of appointment. It is a falsity to submit and contend that the impugned order Annexure-G is not the impugned order. The submissions are therefore incorrect and false. A plain reading of Annexure-R5 shows that it is an order allocating the work to the Archakas and nothing more. The records and his pleadings amply disclose that the impugned order of appointment is Annexure-G and not Annexure-R5. It is with a heavy heart that the Court derides such submissions. Truth of submission

and Majesty of law needs to be zealously protected. The Court hopes and expects that such things will not be repeated.

14. For the aforesaid reasons, the writ petition being devoid of merits is accordingly dismissed. No costs. Rule discharged.