

(2012) 04 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3196 of 2012

Sri Rukmini Sametha Pandurangaswamy Temple, Amaravathi
Village and Mandal, Guntur District

APPELLANT

Vs

Deputy Commissioner Endowments Department Guntur
District, Assistant Commissioner Endowments Department
Guntur District and D. Venkateshwarlu, Executive Officer, Sri
Amareswara Swamy Temple, Amaravathi Town and Mandal,
Guntur District

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 15, 15(1), 15(2), 2(23), 57

Citation : (2012) 4 ALD 231 : (2012) 4 ALT 779

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : R.N. Hemendranath Reddy, for the Appellant; V.T.M. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Nooty Ramamohana Rao

1. The writ petitioner is aggrieved by the orders passed by the Deputy Commissioner of Endowments, Guntur on 18.01.2012 appointing the third respondent herein as a single trustee to Sri Rukmini Sametha Pandurangaswamy Temple, Amaravathi. It is not in dispute that the third respondent is presently functioning as an Executive Officer of Sri Amareswara Swamy Temple, Amaravathi Town. It is stated that the father of the deponent of the affidavit, filed in support of this writ petition, namely Sri Venkata Naga Bhushanam, got constructed Sri Rukmini Sametha Pandurangaswamy Temple at Amaravathi in a site purchased by him somewhere in the year 1949-1950. Sri Naga Bhushanam has maintained and managed the affairs of the Temple as a founder trustee and after the demise of Sri Naga Bhushanam, it is the case of the deponent that he is

managing the affairs of the temple with utmost dedication and devotion without giving any scope for complaints. It is also stated that Sri Rukmini Sametha Pandurangaswamy Temple at Amaravathi Town is one of the institutions which has been notified u/s 6-C of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, Act 30 of 1987 (henceforth referred to, for purposes of brevity as "the Act"). Since the Deputy Commissioner has passed the impugned order on 18.01.2012, without inviting applications for constitution of board of trustees and without providing any opportunity to the writ petitioner for responding to any such notification for appointment as a trustee, being a member of the founders family, the present writ petition is instituted. Heard Sri R.N. Hemendranath Reddy, learned counsel for the writ petitioner, learned Government Pleader for respondents 1 and 2 and Sri V.T.M. Prasad on behalf of the third respondents.

2. Sri R.N. Hemendranath Reddy would point out that the institution is no doubt classified in terms of Section 6-C, but however, its income has crossed the limits of Rs.2.00 lakhs and consequently, the Deputy Commissioner for Endowments, Guntur has no competence to appoint a trustee to such a temple. Wherever the income of the temple has crossed Rs.2.00 lakhs, it is the Commissioner of Endowments, Hyderabad, who is the competent authority to constitute a board of trustees. Therefore for lack of competence itself, the impugned order dated 18.01.2012 should be quashed. Alternatively, the learned counsel for the writ petitioner would contend that, it is all because of hard-work put in by the deponent of the affidavit, the income of the temple has just increased nearly fivefold and when such good work is being done, by the members of the founder's family, constituting a single trustee thus depriving an opportunity to serve the temple by anyone else including the members of the founder family is illegal. It was further contended that the third respondent is an employee of the Endowments Department. He is already functioning as an Executive Officer of Sri Amareswara Swamy Temple, Amaravathi Town. Therefore, choosing such a person for purposes of administering and managing the affairs of another temple is improper.

3. Per contra, the learned Government Pleader would point out that, based upon the income of the institution which is available as per the records at the time of constitution of the trustees, the competence or otherwise of the Deputy Commissioner of Endowments, Guntur, in appointing a trustee to the temple in question should be decided. Since the deponent of the affidavit has not been recognized as a member belonging to the founders family so far, he could not have asked for preferential claim in the matter of appointment as a trustee to the temple. Above all, the learned Government Pleader would contend that the statute itself has conferred discretion on the Deputy Commissioner to constitute a single trustee and it is not necessary that there should be a multi-member board of trustees for each institution. Sri V.T.M. Prasad, learned counsel for the third respondent would urge that the income of the temple in the year 2011-2012 is only a projected income. It is not a realized income. Therefore, the

subject temple still continues to be treated as a 6-C institution and consequently it is the Deputy Commissioner of Endowments who alone is the competent authority for purposes of appointing or constituting a trustee/board of trustees. It is also sought to be contended by the learned counsel for the third respondent that the deponent of the affidavit filed in support of this writ petition is not a recognized member of the founder family and hence he has no right of any manner to oppose appointment of the third respondent as a trustee. It is also contended that the deponent of the affidavit filed in support of this writ petition has not taken good care to protect the assets of the temple and nor did he take necessary steps for securing appropriate income of the temple.

4. In these set of circumstances, the entire question boils down to whether the Deputy Commissioner of Endowments, Guntur, is the competent authority to appoint a single trustee to a temple or not?

5. It is not in dispute that Sri Rukmini Sametha Pandurangaswamy Temple at Amaravathi town, is squarely falling within the definition of the expression "Religious Institution" as defined in Section 2(23) of the Act. Section 6 of the Act empowers the Commissioner of Endowments to prepare separately and publish in the prescribed manner, a list of charitable institutions and endowments or the religious institutions and endowments other than muths based upon their annual income.

6. The institutions are classified based upon the income calculated for the purpose of levy of contribution in terms of Section 65 of the Act. If such annual income of an institution exceeds Rs.25.00 lakhs, such an institution will be published under Clause (a) of Section 6, while the annual income of all other institutions which exceed Rs.2.00 lakhs but does not exceed Rs.25.00 lakhs would be published in accordance with Clause (b) of Section 6 and the rest of the Charitable Institutions and Endowments or Religious Institutions not falling under either of the Clauses (a) or (b) of Section, 6 will be published in accordance with Clause (c) of Section 6. There is no dispute on the factual count that the subject temple is an institution which has been published by the Commissioner in accordance with Section 6 (c) of the Act.

7. Section 15 dealt with the various aspects relating to appointment of Board of Trustees. Sub-section (1) thereof, made it clear that, for all such institutions which have been published in accordance with Section 6-A, but whose annual income exceeds Rs.1.00 crore per annum, it is the Government which shall constitute a Board of Trustees consisting of nine persons and if the annual income of such an institution does not cross Rs.1.00 crore per annum, it is the Dharmika Parishad which shall constitute a Board of Trustees comprising of nine persons. Sub-section 2 of Section 15 makes it clear that, where the income of the institution is less than Rs.2.00 lakhs per annum, the Deputy Commissioner concerned may constitute a Board of Trustees consisting of three persons keeping in view the traditions, sampradayams and wishes of the devotees. The first proviso to Sub-section 2 thereof, empowers the Deputy Commissioner may

either in the interests of the institution or endowment or for any other sufficient cause or for reasons to be recorded in writing appoint a single Trustee instead of a Board of Trustees.

8. Section 57 of the Act dealt with the sanction of budget for every charitable or religious institution or endowment. Sub-section 1 thereof, required every trustee of a charitable or religious institution or endowment to submit in the appropriate form prescribed, a budget showing the probable receipts and disbursements during the following year. Importantly, every trustee is required to submit the said information, 90 days before the close of every financial year. Therefore, the budget will be sanctioned for the following year and the information in that regard was required to be submitted to the Assistant Commissioner concerned, in case the institution is published under Clause (c) of Section 6 of the Act. Thus, the budget will be operated for every financial year which commences on 1st of April to end on 31st March of the next year. Accordingly, the Assistant Commissioner of Endowments, Guntur, has approved and sanctioned the budgetary proposals for the financial year 2011-2012, through his proceedings dated 09.08.2011. It is the case of the petitioner that the net income for the financial year 2010-2011 of the Temple was Rs.2,58,126/-.

9. In view of the net income of the institution concerned being Rs.2.58 lakhs for the year that ended by 31.03.2011, by the time the Deputy Commissioner passed the impugned orders on 18.01.2012, he could not have appointed a trustee to the subject temple. Sub-section 2 of Section 15 clearly mandated that where the income of the institution is between Rs.2.00 lakhs and Rs.25.00 lakhs per annum, it is the Commissioner who shall appoint a Board of Trustees consisting of 5 persons. Hence, it is only appropriate to hold that, it is the Commissioner of Endowments who is the competent authority to constitute a Board of Trustees comprising of 5 persons and it is not the Deputy Commissioner, Guntur who is competent to appoint a Trustee/Trustees to the subject temple, in view of its income exceeding Rs.2.00 lakhs per annum.

10. However, the learned Government Pleader as well as the learned standing counsel Sri V.T.M. Prasad have urged that, in accordance with the proviso added to Section 6, the income of the institution for three consecutive years is what has to be taken into reckoning and if so taken, income of the present temple does not exceed Rs.2.00 lakhs. I do not find any merit in this contention, for, the proviso added to Section 6 enables the Commissioner to alter the classification assigned to an institution or an endowment and subsequently enter the same in the appropriate list, in case the annual income of such institution or endowment falls within the appropriate limits specified in Clause (a) or Clause (b) or Clause (c) for three consecutive years. The proviso has been added to Section 6 by the statute maker to make it abundantly clear that, if an institution is once classified based upon its annual income that would not be the final call in the matter. Power of reclassification of such an institution is vested with the Commissioner. That exercise of power of reclassification of an institution is further guided by

directing the Commissioner to take into account and consideration the annual income of the institution concerned for three consecutive years, so that marginal variations noticed in any once particular year may not trigger the reclassification exercise. Therefore, the proviso has been added to Section 6 exclusively for the purpose of reclassification of the institutions which are once published in accordance with Clause (a) or Clause (b) or Clause (c) of Section 6. Therefore, the question of applying the guiding principle incorporated under the proviso to Section 6 or telescoping the same into Section 15 is wholly impermissible.

11. Sri V.T.M. Prasad has urged that, it is the purposive interpretation that should be adopted, to understand the complete contours of the provisions contained in Section 15 of the Act. It is true that, where a provision contained in a statute has left some ambiguity or uncertainty, such a provision must be attempted to be interpreted in such a way that the overall objective and purpose of the statute is achieved or enhanced rather than diminishing it. However, wherever a provision of law is clear and unambiguous, it is not open to the Courts to supply something more to the statute than what has already been contemplated. It is well to remember that the statute maker is thoroughly conscious of the intended result of each provision of the statute. While Sub-section 1 of Section 15 has made a reference to Clause (a) of Section 6, Sub-section 2 does not make any specific reference to either Clause (b) or Clause (c) of Section 6. The reason why a reference was made to Clause (a) of Section 6 in Sub-section 1 of Section 15 is not very difficult to be deciphered. In terms of Clause (a) of Section 6, all charitable institutions, endowments and religious institutions other than the muths, whose annual income exceeds Rs.25.00 lakhs, they shall be published in terms of Clause (a) of Section 6. In Sub-section 1 of Section 15, the statute has conferred power on two different institutions, to constitute Board of Trustees for all such institutions, which are registered and published under Clause (a) of Section 6. One is the State Government, while the second institution is the Dharmika Parishad. To delineate the respective powers between these two institutions, a further classification is needed. Otherwise, the very exercise of power to constitute Board of Trustees might lead to absurd or chaotic situations, if both institution act independent of each other. Hence, for all such institutions published under Clause (a) of Section 6 whose annual income exceeds Rs.1.00 crore per annum, it is the Government which shall constitute a Board of Trustees consisting of 9 persons appointed by them whereas, for the rest of the institutions published under Clause (a) of Section 6, it is the Dharmika Parishad which shall constitute a Board of Trustees consisting of 9 persons. Therefore, the statute maker has consciously avoided making any reference in Sub-section 2 of Section 15 to Clause (b) or Clause (c) of Section 6. What has not been so provided, should not be attempted to be introduced into Sub-section 2 of Section 15 by way of an interpretative process. I am therefore unable to accede to the contention canvassed by Sri V.T.M. Prasad.

12. The order passed by the Deputy Commissioner of Endowments appointing a trustee to the subject temple is invalid. But however, if there is no trustee, the

administration and the affairs of the institution may not be carried out properly and efficiently. It is therefore appropriate to direct the Commissioner of Endowments to exercise the power available to him under Subsection 2 of Section 15 and constitute a Board of Trustees to Sri Rukmini Sametha Pandurangaswamy Temple, Amaravathi, Guntur District, within a maximum period of four months from the date of receipt of this order. Till such time, the third respondent will continue to discharge the functions as a trustee to the temple. Such an arrangement is liable to be treated as an interim arrangement. As soon as the Board of Trustees are constituted for the subject temple, the third respondent will hand over all the necessary records and registers and properties of the said temple to such a Board for their proper custody and efficient management. With this order, the writ petition stands allowed. No costs.