
(1991) 03 AP CK 0020
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1172 of 1991

Sriramamurthy

APPELLANT

Vs

Commissioner of Endowments, Hyderabad and others

RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 10, 107, 11, 132, 15
Constitution of India, 1950 — Article 226, 30(1)

Citation : AIR 1992 AP 260 : (1991) 2 ALT 321

Hon'ble Judges : Sivaraman Nair, J

Bench : Single Bench

Advocate : M. Ramachandra Reddy, for the Appellant; C.S.K.V. Ramana Murthy, for the Respondent

Judgement

Sivaraman Nair, J.—Petitioner challenges the orders Re. No. B3/6811/90 E.Os. Estt. dated 28-6-1990 of the Deputy Commissioner of Endowments, Guntur, whereby a clerk in the services of the Devasthanam was appointed by promotion as executive Officer.. The main ground urged by the petitioner is that the power to appoint Executive Officers of Charitable and Hindu Religious Institutions and Endowments can be exercised only by the State Government under S. 29 of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987. He submits that the State Government is not competent to delegate its power to the Commissioner or any of its subordinates. Reliance is placed on the decision of my learned brother Neeladri Rao, J. in Writ Petition No. 12488/89 dated 6-7-1990.

2. "Executive Officer" is defined in S. 2(13) of the A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1987, hereinafter referred to as the "Act" as "an officer appointed as such under any of the provisions of this Act". Section 2(6) defines "Commissioner" "Deputy Commissioner" and "Assistant Commissioner" are defined in S. 2(9) and 2(2) respectively of the Act. The powers of the. "Commissioner", "Deputy Commissioner" and "Assistant

Commissioner" are specified in Ss. 8, 10 and 11 of the Act. According to S. 8 of the Act, the administration of all charitable and Hindu religious institutions and Endowments shall be under the general superintendence and control of the Commissioner and "such superintendence and control shall include the power to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found or exist". Sub-section (2) of S. 8 enables him to exercise powers and functions entrusted to him by or under the Act. Subsection (4) empowers him to delegate any of the powers conferred on or functions entrusted to the Commissioner by or under the Act, including the powers and functions of an Assistant Commissioner, excepting the powers and functions of the Commissioner in sub-section (I), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institutions or endowments or any class or group of institutions or endowments in the State subject to such restrictions and control as the Government may by general or special order lay down and subject also to such limitations and conditions, if any, as may be specified in the order of delegation. Sub-section (5) deals with the power of the Commissioner, to delegate similar powers to the Assistant Commissioner in similar circumstances.

3. I find that the entrustment of power under S. 8 to the Commissioner to administer all charitable and Hindu Religious Institutions and Endowments and the specific power "to pass any order which may be deemed necessary to ensure that such institutions, and endowments are properly administered and their income is duly appropriated for the purposes for which they were found to exist" is wide enough to take in the power of appointment of Executive Officers of temples.

4. My learned brother Neeladri Rao, J. has found it otherwise. The main reason mentioned by him is that S. 29 of the Act deals with the appointment and duties of Executive Officers, since the heading of that section is "Appointment and duties of Executive Officer". My learned brother has sought to rely upon the difference in terminology of S. 27 the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966, which correspond to the present Section 29, in that the former entrusted the power of appointment of Executive Officers of specified classes of institutions to the hierarchy of officers viz., Commissioner, Deputy Commissioner and Assistant Commissioner. He also pointed out that sub-section (5) of Section 29 of the Act provides that the Executive officer appointed under this section shall be under the administrative control of the trustee of the institution" to find that the Government alone has power to appoint Executive Officers. He referred to sub-section (6), which provides that the "Executive Officer Appointed under this Section shall be the employee of the Government and the conditions of his service shall be such as may be determined by the Government". An inference is drawn from the above provisions viz., the heading of the section and the reference to "Appointment and duties of Executive Officer under this section" that the only provision dealing with the appointment of Executive Officers under the Act is S. 29, and the appointing authority

thereunder is the Government and not the Commissioner.

5. I have my reservations about this reasoning. It is unfortunate that the legislative draftsmen merely copied sub-secs. (4) and (6) of S. 27 of the repealed Act, without advertent to the changes brought about in sub-secs. (1) to (3) which dealt with the Appointment of Executive Officers, nor did the draftsman realise the consequences of retaining the heading of the repealed S. 27, for the re-enacted S. 29, even though the re-enacted provisions (a) dealt only with the power of the Government to group one or more Charitable or Religious Institutions and Endowments which are to be classified on the basis of their income, (b) provided for the appointment of Executive Officers for each such group and (c) constituted grades and scales of pay for such Executive Officers. I am of the opinion that since S.29 of Act 30 of 1987 as it stood originally did not specifically deal with the power of appointment of Executive Officers, the heading of that section shall not be considered as determinative of the import of that provision -- *Samad v. A.P.S.R.T.C.* 1983 Lab IC 1513 (Andh Pra) nor shall that heading be interpreted in such a manner as to restrict the power of administration of Religious Institutions which is within the purview of the Commissioner u/S. 8 of the Act.

6. It is often said -- and it requires repetition -- that in interpreting statutes, there must be an anxiety on the part of the courts to read the provisions as a whole, not each section in an isolated manner -- and to read the different provisions harmoniously, and not so as to contradict each other.

7. The power of administration has always been understood to take in the power of appointment of officers and employees. The Supreme Court has repeatedly held that the right "to administer educational institutions of their choice", conferred by Art. 30(1) of the Constitution of India -on minorities necessarily takes in the power of appointment of heads of institutions, teachers etc. It is almost axiomatic that the power of administration cannot be effective unless it takes in the power to appoint instrumentalities, through whom the administration has to be carried out. I am therefore of the view that S. 8 of the Act is comprehensive enough to empower the Commissioner to appoint Executive Officers of Religious Institutions and Endowments, which are governed by the Act. That is also the effect of the decision of a division bench of this court in *W.A. Nos.*"567 and 568 of 1974, dt. 7-4-1976. I am not therefore persuaded by the judgment of my learned brother Neeladri Rao, J. to the contrary.

8. It is true that a specific provision relating to appointment of Executive Officers can be separately made apart from the power of administration; and in such a case, the specific provision alone may be operative. My learned brother Neeladri Rao, J. found that the Act does not contain any specific provision dealing with appointment of Executive Officers, excepting S. 29 of the Act. I am of the opinion that S. 29 as it originally stood except the heading, did not contain any provision relating to appointment of Executive Officers. The crude and inartistic manner in which some provisions of S. 27 of the repealed Act have been reproduced

without advertent to the changes in the main body of the section does not justify any inference that S.29 is the only provision dealing with the appointment of Executive Officers.

9. It was assumed that the power of appointment of Executive Officers cannot be exercised in the absence of rules framed u/S. 29(3) read with S. 33 of the 1987 Act. It has also been assumed that there were no rules dealing with the appointment of Executive Officers under the 1966 Act. It is, however, agreed that the State Government had framed the A.P. Endowments Executive Officers Subordinate Service Rules, 1978 in exercise of the power u/s. 27(5) read with S. 107 of the 1966 Act dealing with the appointment of Executive Officers, their classification, grades etc. S. 155 of the present Act repealing the 1966 Act provides that all rules made, notifications or certificates issued, orders passed, decisions made, proceedings taken and other things done by any authority or officer under the repealed Acts, shall in so far as they are not inconsistent with this Act be deemed to have been made, issued, passed, taken or done by the appropriate authority or officer under the corresponding provisions of this Act and shall have effect accordingly until they are modified, cancelled or superseded under the provisions of this Act. Thus, the service rules made in respect of Executive Officers in G.O.Ms. No. 969 Revenue (Endowments) Department, dt. 7th June, 1978 are thereby preserved. It shall not be as if there is a vacuum in the administration of Religious Institutions and Endowments. The courts shall be more anxious to maintain continuity of the institutions and their administration rather than to strike at the root of such continuance.

10. I am also of the opinion that if it is to be held that Executive Officers can be appointed only by the State Government because of the heading of S. 29 it will result in a very anomalous situation. Section 15 of the Act deals with the appointment of trustees for classes of institutions/Endowments which are notified u/S. 6 of the Act. The Commissioner has power to constitute Boards of Trustees for institutions whose income does not exceed rupees ten lakhs. Similar powers can be exercised by Deputy Commissioners and Assistant Commissioners respectively in respect of institutions whose income is between Rs.50,000/- and Rs. 2,00,000/-and those with less than that respectively. Under S. 29(5) of the Act, the Executive Officer appointed shall be under the Administrative Control of the trustee of the institution or endowment and shall be responsible for carrying out all lawful directions issued by such trustee from time to time. In other words, an executive officer who can be appointed only by the Government shall be under the Administrative Control of trustees appointed by the Commissioner or the Deputy Commissioner or even the Assistant Commissioner, as the case may be. This anomalous situation can be avoided by holding that the Commissioner, Deputy Commissioner or Assistant Commissioner as the case may be, have the power to appoint Executive Officers for classified institutions notified u/S. 6 as provided in Ss. 8, 10 and 11 of the Act. It is but an elementary principle of interpretation that an obvious anomaly or a manifest absurdity shall, if possible, be avoided. It is the duty of the courts rather to avoid than create anomalies by

interpretation.

11. These appears to me to be weighty factors which have to be taken into consideration in locating the power of appointment of Executive Officers of Religious Institutions and Endowments under the Act. For these reasons I am not in a position to agree with the decision of my learned brother, Neeladri Rao, J.

12. I would have referred this Writ Petition to a division bench in view of my inability to agree with the views of my learned brother Neeladri Rao, J. Counsel referred me to two decisions of Division Benches of this court, which render such a course unnecessary. I have dealt with those two decisions in some detail, in my judgment in W.P. 1811 of 1991. Therefore, I need only briefly indicate the ratio of those two decisions.

13. In W.A. 644/74 a division bench of this court held that the Commissioner could group institutions or endowments with others u/S.27(2)(b) of Act 17 of 1966 only "in accordance with such rules as may be framed by the Government in this behalf and if there are no rules, the Commissioner shall not exercise that power." in W.A. 1715/88 another division bench held with reference to Ss. 29 and 33 of Act 30 of 1987 that S. 29 of the Act will be operative only when rules are framed u/S. 33 of that Act. The court however held that since S. 29 of the new Act had not become effective, the rules, orders etc. made under the 1966 Act would operate. The effect of the later decision of the division bench is to save the 1978 rules which were framed under the 1966 Act. In that case, the Commissioner is the authority competent to appoint executive officers.

14. Apart from these legal aspects there are some factual details which inhibit invocation of the jurisdiction of this court to interfere. 4th respondent asserts that the petitioner is not Chairman of the Board of non-hereditary trustees of Sri Venugopalaswamy temple and Sree Ramachandraswamy temples as he claims to be and that there are two different trust boards for those temples, whose chairmen are Sri Narayana Venkata Subba Rao and Sri P. Kameswara Rao, respectively. These assertions are not controverted. Secondly, the 4th respondent has stated that he was posted on promotion to the present group of temples of which Executive Officer of another group of temples was in additional charge. That Executive Officer filed O.A. No. 11 of 1991, but could not obtain an order of stay of the order impugned herein. Counsel for the respondents submits that this original petition is filed on false allegations at the instance of Sri Chandrasekhara Rao whom the respondent relieved of his additional charge under the impugned order. These factual controversies are better decided elsewhere and not in extraordinary proceedings under Art. 226 of the Constitution of India.

15. Since no question of classification of institutions or endowments "in accordance with such rules as may be framed under the Act" arises under the new Act, the judgment in W.A. 644/74 does not render any assistance to the petitioner. It, however, reinforces the finding that S. 29 of Act 30 of 1987 can be

operative only when rules are framed u/S. 33 of the Act, and hence the 1978 Rules are effective even now. More important is the fact that S. 29(3) has been amended by a notification published in the Andhra Pradesh Gazette (Extraordinary), dt. 7-12-1990 substituting the words "constitute such grades of Executive Officers, prescribing their appointing authorities; in the place of "constitute such grades of Executive Officers". By virtue of this amendment, Government is enabled to frame rules relating to grades, appointing authorities etc. of Executive Officers. The effect of the amendment is to bring S. 29 of 1987 Act in conformity with the provisions of S. 27 of the 1966 Act. In other words, repugnancy, if there was any, between S. 27 of the 1966 Act and S. 29 of the 1987 Act has now been eliminated.

16. I, therefore hold that -

(i) Section 8 of Act 30 of 1987 enables the Commissioner, ordinarily, to appoint Executive Officers.

(ii) The special provisions of S. 29 of Act 30 of 1987 can be operative in respect of appointment of Executive Officers only when Rules are promulgated u/S. 33 of that Act.

(iii) There is no repugnancy between S.27 of 1966 Act and S.29 of 1987 Act (after amendment of sub-sec. (3) thereof by notification dt. 7-12-1990) in respect of appointment of Executive Officers, since both provide for such appointment and other incidental matters to be prescribed by Rules.

(iv) The Endowments Executive Officers Subordinate Service Rules, 1978 continues to be in force by reason of S. 155(2) of Act 30 of 1987, and for that reason also, the Commissioner has power to appoint Executive Officers.

(v) The promotion of employees of institutions or endowments to the posts of Executive Officers in terms of the statutory reservation cannot be challenged in these proceedings.

(vi) Petitioner is not a person aggrieved since the effect of the order impugned in this Writ Petition is only to substitute one Executive Officer in the place of another and the same does not involve violation of any of the rights of the petitioner.

(vii) It is not for this court to investigate into disputed questions of fact as are involved in this Writ Petition.

17. I, therefore dismiss this Writ Petition. No costs. Advocate's fee Rs. 250/-.

18. Petition dismissed.