

(2002) 06 AP CK 0125

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 2195 of 1998

The Rayalaseema College Vyaya Hostel, Anantapur and
Another

APPELLANT

Vs

The Commissioner, Endowments Department, A.P. Hyderabad
and Another

RESPONDENT

Date of Decision : 17-06-2002

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 29, 29(5), 57(1), 65(1)
Constitution of India, 1950 — Article 14, 226

Citation : (2002) 06 AP CK 0125

Hon'ble Judges : S.R. Nayak, J; Dalava Subrahmanyam, J

Bench : Division Bench

Advocate : M.S.K. Sastry, for M.V. Suresh, for the Appellant; G.P. for Endowments for Respondent No. 1 and Ratna Sastry, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The unsuccessful petitioners have filed this writ appeal questioning the correctness of the order of the learned single Judge dated 26th March 1998 in W.P. No. 157 of 1991.

2. In the writ petition, the petitioners sought Mandamus declaring that they do not fall under the purview of the provisions of the A.P. Charitable & Hindu Religious Institutions and Endowments Act, 1987 (for short, the "Act") and therefore the Commissioner of Endowments, A.P. Hyderabad had no authority or jurisdiction over the petitioners. In the writ petition, the order of the 1st respondent in D.Dis. No. 02/60459/90 dated 30.11.1990 appointing the Executive Officer - the 2nd respondent in the writ petition - to Sri Lakshmi Narasimha Swamy Temple, Ponnahobilam, Amidyalu, Uravakonda Mandal, Anantapur District, was also assailed. The writ petition was opposed by the respondents by filing counter affidavit. The material averments in the counter can be summarised as follows:

That the petitioner institutions were notified even under the Old Act, being Act 17 of 1966 and they were again notified as charitable institutions in terms of the new Act i.e. Act 30 of 1987 and the list was issued as early as on 7.7.1987. It is further stated that in terms of Section 65(1) of the Act, all such institutions which are subject to the Endowments Act have to pay contribution towards the Government each year in case their income exceeds Rs. 5,000/- and the contribution has to be paid at the rate of seven per cent of the annual income. It is stated that the petitioners have all along paid this contribution. This was paid in the year 1990 as well. Therefore, there was no question that the institution was not subject to the provisions of the Act. It has been further stated that the petitioners have not maintained the demand, collection, balance registers as required under the Act and the committee of the said institution is not submitting the Budget estimate every year to the concerned authorities as required under the statutory provisions u/s 57(1) of the Act 30 of 1987. The managing committee leased out shops belonging to the institution by private negotiations to their own interested persons at nominal rents which is contrary to the provisions of the Act. The actions of the managing committee were causing financial losses to the institution, therefore, an Executive Officer had been appointed by the order impugned for better management and administration of the institution and to have effective control over the institution by the department. The appointment of the Executive Officer will not disturb the petitioners' management in any respect for he has to discharge his functions and duties under the administrative control of the managing committee and maintain the accounts and keep all the registers in his custody as contemplated under the Act and that this arrangement has only been made to streamline the management.

3. Before the learned single Judge, on behalf of the petitioners, two contentions were raised, namely, (1) that the 1st respondent had no jurisdiction to pass the impugned order dated 30.11.1990 appointing the 2nd respondent as the Executive Officer of the subject temple inasmuch as the petitioners fall outside the purview of the Act and (2) that the impugned order passed by the 1st respondent appointing the Executive Officer is illegal being violative of principles of natural justice, because, before passing the impugned order, no notice was issued to the petitioners. The learned single Judge rejected both the contentions and dismissed the writ petition by the order impugned in this writ appeal. Hence this writ appeal by the aggrieved petitioners.

4. We have heard Sri M.S.K. Sastry, learned senior counsel for the petitioners, Smt. Nanda R. Rao - learned Government Pleader for Endowments and Mr. Ratna Reddy - learned counsel for the 2nd respondent. Sri Sastry, placing reliance on the judgment of the Supreme Court in *P. Sridhara Rao v. Government of A.P.* 1 and a judgment of a Division Bench of this Court in *Executive Officer, T.G. Temples v. Gopal Inani* 2, contended that the impugned order of the 1st respondent appointing the 2nd respondent as the Executive Officer could not be sustained for violation of principles of natural justice, particularly in the context

of what is disclosed in the counter filed affidavit of the respondents. Sri Sastry also contended that merely because the petitioners paid contributions u/s 65(1) of the Act in respect of the previous years, that fact itself would not operate as an estoppel against the petitioners from raising the plea that the petitioners fall outside the purview of the Act. In support of this contention, the learned senior counsel placed reliance on the judgment of the Supreme Court in *State of Madras v. K. Melamatam* 3.

5. Learned Government Pleader for Endowments, on the other hand, contended that Section 29 does not contemplate issuance of notice to the petitioners before appointment of an Executive Officer and, therefore, non-issuance of notice to the petitioners before the 2nd respondent was appointed as the Executive Officer would not vitiate the impugned action. Learned Government Pleader also contended that the very conduct of the petitioners in paying contributions all these years not only under the present Act but also under the repealed Act and now taking the plea that they fall outside the purview of the Act, cannot be countenanced. The learned Government Pleader also contended that by appointing the 2nd respondent as the Executive Officer none of the rights of the petitioners are violated, because, in terms of Clause (a) of Sub-Section (5) of Section 29 of the Act, the Executive Officer has to function under the administrative control of the trustees of the subject institution or endowment and he is also bound to carry out all the directions issued by such trustees. Sri Ratna Reddy, learned counsel for the Executive Officer-2nd respondent would adopt the argument of the learned Government Pleader for Endowments.

6. Having heard the learned counsel for the parties, the question that arises for us to consider and decide is, whether the 1st respondent in passing the proceedings dated 30.11.1990 appointing the 2nd respondent as the Executive Officer of the subject temple has acted without jurisdiction and whether the said action is otherwise violative of principles of natural justice?

7. The petitioners having submitted to the jurisdiction of the authorities under the repealed old Act as well as under the present Act and having paid contributions all these years u/s 65(1) of the Act, they cannot now turn round and contend that they fall outside the purview of the Act. The petitioners cannot be permitted to approbate and reprobate. The petitioners in their very conduct have waived their right to raise the plea that their institution does not fall under the purview of the Act. Be that as it may, the question whether they fall under the purview of the Act or not cannot be gone into while reviewing the action of the respondent in appointing the 2nd respondent as the Executive Officer Article 226 of the Constitution. In that view of the matter, the reasoning of the learned single Judge to reject the above argument of the petitioners is not only well founded but also based on sound reasoning. This takes us to the second contention of the petitioners that even assuming that the order made by the 1st respondent is in order and with jurisdiction, nevertheless, it is vitiated on account of violation of principles of natural justice.

8. It is an admitted fact that before the 2nd respondent issued the impugned proceedings appointing the 2nd respondent as the Executive Officer, no notice was served on the petitioners to have their say in the matter. The question is whether such a course of action was necessary on the part of the 1st respondent to conform to the principles of natural justice? Section 29, as such, does not envisage any of notice to the hereditary trustees before appointment of an Executive Officer to the institution. Nevertheless, if any action that may be taken by the Commissioner u/s 29 of the Act is going to affect the legal interests or rights of the hereditary trustees, the postulates of Article 14 of the Constitution are to be read into the provisions and the Commissioner should be mandated to conform to the principles of natural justice. Therefore, we should see whether by appointing the Executive Officer to the subject temple any of the petitioners' legal rights are affected or violated.

9. Mr. Sastry would vehemently contend that some of the rights of the petitioners are violated by appointing the 2nd respondent as the Executive Officer. In support of this contention, the learned counsel would draw our attention to the provisions of Clause (d) of Sub-Section (5) of Section 29 of the Act. It reads as follows:

"(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, as the case may be, of the institution or endowment shall exercise the powers, perform the functions and discharge the duties of an Executive Officer".

10. The above provisions, instead of aiding the contention of the learned counsel, support the Commissioner of Endowments. The above provisions are clear indication to say that only in the absence of Executive Officer appointed by the Commissioner u/s 29 of the Act, the trustees or the Chairman of the Board of Trustees of the institution can exercise powers, perform the functions and discharge the duties attached to the office of the Executive Officer and not otherwise. Simply because before the appointment of the Executive Officer, the Chairman and the Board of Trustees of the petitioner-institution were exercising the powers and performing the functions and discharging the duties of the Executive Officer, that fact itself would not come in the way of the donee of the power, namely, the Commissioner of Endowments in exercising the statutory power granted to him u/s 29 of the Act. We do not find such restriction in any of the provisions of Section 29 of the Act nor that any other provision was brought to our notice, which would indicate that the Commissioner could not have appointed the 2nd respondent as the Executive Officer without hearing the petitioners.

11. Be that as it may, by appointing the Executive Officer, none of the legal rights of the petitioners are violated or impaired. As rightly pointed out by the learned Government Pleader for Endowments, Clause (a) of Sub-Section (5) of Section 29 of the Act mandates that the Executive Officer appointed should function under the administrative control of the trustee of the institution and is obligated

to carry out all lawful directions issued by such trustee from time to time. This is a clear indication that the appointment of an Executive Officer would not offend or violate any of the legal rights, which are otherwise vested in the trustee of the institution. Though it is true that the affected should be apprised before taking adverse action, that rule is not insisted where none of the rights of the complainant are violated by an administrative action.

12. The writ appeal is devoid of merit and it is accordingly dismissed with no order as to costs.