(2004) 02 AP CK 0075

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4649 of 2003

Veerabhadra Swamy Temple APPELLANT

Vs

Commissioner, Endowment Department and Others RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 29(5), 8

Citation : (2004) 2 ALD 532 : (2004) 3 ALT 44

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Vijay Kumar Heroor, for the Appellant; Government Pleader for Respondent Nos. 1 and 2 and Subrahmanya Reddy, for Vijay B. Paropakari, for the Respondent

Final Decision : Allowed

Judgement

Goda Raghuram, J.—Shri Veerabhadra Swamy Temple, Bonthupally, District Medak, represented by its Chairman, G. Bhadrappa, (for short ''VBS Temple'') seeks invalidation of the proceedings bearing Rc.No.G3/54994/ 2002 dated 7-3-2003 issued by the Deputy Commissioner (S), Endowments Department, Hyderabad-2nd respondent. The proceedings dated 7-3-2003 is a response to a representation made by the 3rd respondent herein and directs the writ petitioner-VBS Temple to pay the arrears of salary to the 3rd respondent upto February, 2003, immediately. A brief outline of the preceding facts requires to be recorded:

(a) The impugned order is purportedly passed consequent on the orders of this Court in WP No. 25133 of 2002. The 3rd respondent herein had earlier worked in VBS Temple upto 31-8-2001. Thereafter he was transferred to Sri Suryagiri Yellamma Temple, Ravirala (v) (for short ''Yellamma Temple'' with effect from 1-9-2001. At Yellamma Temple he drew salary for a period of ten (10) months with effect from 1-9-2001. As he was not paid any emoluments thereafter, he was relieved from Yellamma Temple and transferred to Sri Veeranjaneya, ST., Gattuppalli and he was given charge of both the temples. Admittedly, the 3rd respondent is not working at VBS Temple since 1-9-2001.

(b) As the petitioner was not paid salaries, he filed WP No. 24828 of 2002 challenging the action of the Endowments Department in forcing him to handover charge to the Person-in-Management of the VBS Temple. By the judgment dated 14-8-2002, this Court disposed of WP No. 24828 of 2002 directing the respondents therein to clarify to the petitioner from where and which authority he has to draw salary and to ensure the drawal of salary and payment of the same to him, within a week of the succeeding month. The judgment also recorded that an undertaking of the 3rd respondent herein, the petitioner therein, was required to be filed that he would handover the charge of the VBS Temple.

(c) Thereupon, the Commissioner of Endowments issued a letter dated 23-11-2002 according, permission to the 3rd respondent to take his salary from the VBS Temple characterizing the same as ''parent institution.'' Aggrieved by the order dated 23-11-2002, the petitioner herein filed WP No. 25133 of 2002. This Court by the order dated 7-1-2003 suspended the order dated 23-11-2002 of the Commissioner of Endowments. The 3rd respondent herein filed an application - W.V.M.P. No. 187 of 2003 seeking vacation of the interim suspension granted by this Court. The said application was considered and by the order dated 31-1-2003, this Court modified the interim order directing the Commissioner to re-consider the entire issue relating to the payment of the salary to the 3rd respondent herein within two (2) weeks. Thereupon, the 1st respondent-Commissioner issued the impugned order dated 7-3-2003.

Admittedly, the 3rd respondent is not working as the ''Person-in-Management or at all in the VBS Temple. He is not rendering any service thereat. It is neither pleaded, urged nor demonstrated before the Court that the properties, assets or incomes of all temples in the State, constitute one unit over which the 1st respondent or the State have an un-canalised control to direct the transfer or utilization from one institution to the other. The properties and income of each temple in the State or endowment is the property of that particular temple or endowment. The role of the State is limited to ensuring proper management of the properties and generation of reasonable income from such properties. The power of the State does not extend to interference with the religious activities or to alter the purposes for which endowments were made by philanthropic persons - endowments made to particular temples or institutions.

2. Under our constitutional scheme, the State is ordained a ''secular role''. No funds are granted by the State to the religious institutions. In this perspective of the constitutional values, diversion of funds from one temple to another is prohibited and would amount, in truth and effect, to appropriation of the assets of religious institutions by the State. Diversion of funds from one temple to another by a unilateral directive of the endowments authority would amount to misappropriation of funds of one temple for unauthorized utilization by the other.

No such power is discernible under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act No. 30 of 1987) (for short ''the Act'').

3. Mr. Subrahmanya Reddy, learned Senior Counsel appearing for the 3rd respondent herein contends that the 3rd respondent was appointed as the ''Person-in-Management" of the Yellamma Temple, pursuant to a selection made in accordance with the provisions of Section 29(5)(d) of the Act. It is contended that Section 29(5)(d) of the Act enables the Commissioner of Endowments to authorize inter alia any employee of an institution to exercise the powers, perform the functions and discharge the duties of an Executive Officer. Under this statutory dispensation, by proceedings dated 15-6-2001, a committee of officers was constituted for the purpose of selecting the deserving candidates from among the employees of the institutions and endowments, for the purpose of authorizing them to perform the functions of Executive Officers as envisaged in Section 29(5)(d) of the Act. Such a committee had selected inter alia the 3rd respondent authorizing him to perform the functions, duties and discharge the responsibilities of an Executive Officer in relation to the Yellamma Temple. As the 3rd respondent performed the duties and discharged the functions of an Executive Officer, he is entitled to be paid his salary and emoluments treating him as an Executive Officer under Sub-section (5) of Section 29 of the Act. Section 29(6) of the Act reads as under:

"Section 29(6) 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. The salary, allowances, pension and other remuneration of the Executive Officer shall be paid in the first instance out of the Consolidated Fund of the State and later recovered from the Endowments Administration Fund established u/s 69 of this Act."

4. Learned Senior Counsel Shri Reddy fairly states that the action of the 1st respondent directing that the VBS Temple, where the 3rd respondent is not rendering any service in presenti to pay the salary of the 3rd respondent for the services rendered in Yellamma Temple is not authorised under any provisions of the Act. The substance of the 3rd respondent''s contention is that as he is performing the functions and duties of an Executive Officer, he is entitled to be remunerated under the provisions of Sub-section (6) of Section 29 of the Act.

5. Smt. N.R. Rao, learned Government Pleader for Endowments, contests this stance of the 3rd respondent. It is the contention urged on behalf of the official respondents herein that subsection (6) of Section 29 of the Act and the obligation thereunder to the drawal of salary, allowances and pension to the Executive Officer should be comprehended in the context of the scheme of Section 29 of the Act. Learned Government Pleader contends that by the provisions of Section 29(1) of the Act, the Government is enabled to constitute charitable or religious institutions and for each group of such constituted religious institutions or endowments, there shall be appointed an Executive Officer. As an

Executive Officer cannot be appointed u/s 29 of the Act for every charitable or religious institution, in particular those which do not fall within the group constituted u/s 29(1) and (2) of the Act, the mere authorization of the powers and functions of an Executive Officer u/s 29(5)(d) of the Act does not constitute the persons authorized by the Commissioner to perform the functions and discharge the duties of an Executive Officer (under Section 29(5)(d) of the Act) as ''Executive Officers'' and, therefore, entitled to salary, allowances and pension u/s 29(6) of the Act. Having made this submission, learned Government Pleader was at a loss, despite considerable effort, to trace the source from which the persons so authorized to perform the functions and duties of an Executive Officer should be remunerated.

6. The Constitution of India prohibits ''Begar'' (Article 23). It prohibits employment of bonded labour even by the State, It is axiomatic, therefore, that the 3rd respondent having been appointed as Person-in-Management should be remunerated by the State itself from wherever it is authorized to draw funds for such payments. The drawal of funds from writ petitioner-Temple for the purpose of paying the 3rd respondent for discharging the duties of some other temple has no discernible legitimacy under the provisions of the Act. The faint attempt by the learned Government Pleader to sustain the impugned order on the basis of the plenitude of power available to the Commissioner u/s 8 of the Act does not commend acceptance by this Court. Section 8 of the Act is subject to the provisions of the Act, and it is axiomatic, subject to the provisions of the Constitution of India as well. The power of general superintendence and control inhering in the Commissioner and Additional Commissioner u/s 8 of the Act is conditioned by a statutory instruct that such power of superintendence and control is for the purpose of ensuring that institutions and endowments are properly administered and their income is duly appropriated ''for the purposes for which they were found or exist'' (emphasis). It is not even the implication of the official respondents that VBS Temple was founded or exists for the purpose of funding the administration of Yellamma Temple. The wide powers of superintendence and control consecrated to the Commissioner of Endowments cannot be understood as an uncanalised power of an infinite extent. Absolute power there never is in a constitutional democracy. The power u/s 8 of the Act is conditioned by a specific statutory instruct that sets out the limits of the superintendence of power conferred on the Commissioner. On a true and fair construction of the provisions of Section 8 of the Act, the inference is irresistible that the proper administration of an institution or endowment contextually means appropriation of its income or utilization of its properties for the purposes for which that particular religious institution or endowment was founded or exists and for no other. In the absence of a demonstration by the official respondents that the VBS. Temple was founded inter alia for the purposes of proper administration of Yellamma Temple, the impugned order directing the writ petitioner-Temple to pay salaries to the 3rd respondent for the period he was functioning as an Administrator of Yellamma Temple is unsustainable,

incompetent and constitutes a transgression of all expressed and implied limitations on the powers of the 1st respondent.

7. As the 3rd respondent has been appointed on the basis of purported exercise of powers u/s 29(5)(d) of the Act pursuant to a process of selection engendered by an administrative scheme framed by the 1st respondent and to perform the functions and responsibilities of an Executive Officer and as the State is prohibited from employing persons without remunerating them for the services rendered and as the discharging of functions and responsibilities of a Person-in-Management of a temple is presumptively in exercise of the regulatory power of the State, this Court declares that the liability to pay the salaries and emoluments of the 3rd respondent rests with the State. For the purpose of this case and in the context of the factual and legal issues which arise in this case, I do not consider it necessary to further examine whether a Person-in-Management appointed in purported exercise of powers u/s 29(5)(d) of the Act is for all intents and purposes an Executive Officer within the meaning of Section 29 of the Act. That issue could be reserved for consideration in an appropriate case where the need for such resolution is inescapable. This case presents no such requirement.

8. By an interim order dated 214-2003, this Court granted interim suspension of the impugned order dated 7-3-2003 subject to the condition that the writ petitioner-Temple pays three months'' salary to the 3rd respondent within a fortnight from the date of the said order. This interim order was coupled with a default clause. It is represented by the learned Counsel for the petitioner that pursuant to the interim directions as above, the petitioner-Temple has paid three months'' salary to the 3rd respondent. If such salary has been paid by the petitioner to the 3rd respondent, in view of the declaration in this judgment that the writ petitioner is not obligated to pay any salary for the period to the 3rd respondent, the petitioner may make a representation to the 1st respondent for reimbursement of the amounts paid by it to the 3rd respondent. The 1st respondent shall be obligated to consider such representation. On the satisfaction of the 1st respondent that the petitioner had, in fact, paid the three mouths'' salary to the 3rd respondent, it shall be the obligation of the 1st respondent to forthwith reimburse the amounts so paid by the petitioner to the 3rd respondent. The 3rd respondent complains that he has not been paid the salary for a period of nine (9) months. The 3rd respondent is at liberty to make a representation to the 1st respondent for expeditious payment of salary due to him. Such representation, when made, shall receive expeditious consideration by the 1st respondent.

9. On the analysis above, the order dated 7-3-2003 is set aside. The writ petition is allowed. As the writ petitioner-a religious institution was constrained to approach this Court to safeguard its income consequent on a wholly illegal and unsustainable exercise of power by the 1st respondent, I consider it appropriate to allow the writ petition with costs quantified at Rs. 1,500-00 (Rupees one

thousand and five hundred only) payable by the 1st respondent to the writ petitioner.

