
(2011) 03 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 27776 of 2005, 23870 of 2007, 28173 of 2008 and 12696 and 14354 of 2010

Yelamarthi Sarath Kumar and Others

APPELLANT

Vs

The State of A.P. and Others

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 — Section 6
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 144, 15, 15(1), 154, 16
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Appointment of Trustees Rules, 1987 — Rule 3, 4, 4(1), 4(2)
Constitution of India, 1950 — Article 14, 144, 15(1), 226
Motor Vehicles Act, 1939 — Section 68C
Road Transport Corporations Act, 1950 — Section 12
Writ Proceedings Rules, 1977 — Rule 7A

Citation : (2011) 03 AP CK 0048

Hon'ble Judges : Ramesh Ranganathan, J;Goda Raghuram, J

Bench : Division Bench

Advocate : P.S. Rajasekhar, in WP No. 27776 of 2005 and P. Yadagiri Rao, in Writ Petition Nos. 23870 of 2007, 28173 of 2008 and 12696 and 14354 of 2010, for the Appellant; G.P. for Endowments for Respondent No. 1 to 3 in Writ Petition Nos. 27776 of 2005, 23870 of 2007, 28173 of 2008 and 12696 and 14354 of 2010, V. Venugopal Rao and P. Yadagiri Rao, in W.P. No. 27776 of 2005, P.S. Rajasekhar, in Writ Petition No. 28173 of 2008 and V.T.M. Prasad, in Writ Petition No. 14354 of 2010, for the Respondent

Judgement

Ramesh Ranganathan, J.—Repeated efforts of the Government notwithstanding, a board of trustees, as mandated by Section 15(1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (A.P. Act 30 of 1987), has not been constituted for the Sri Venkateswara Swamy Devasthanam, Dwaraka Tirumala for the past nearly twenty five years, and Sri S.V. Sudhakara Rao, and his family members (erstwhile "hereditary trustees"), continue to remain in sole control and management of the affairs of the temple, though the

office of hereditary trustee stood abolished from 23.05.1987.

2. W.P. No. 27776 of 2005 is filed by Sri Yemeni Sarath Kumar, a resident of Dorasanipadu village of Dwaraka Tirumala Mandal, West Godavari District, in public interest to declare the inaction of the State Government, in not constituting a non-hereditary trust board for the fourth Respondent, (Sri Venkateswara Swamy Devasthanam, Dwaraka Tirumala), in accordance with Section 15 of A.P. Act 30 of 1987, as arbitrary and illegal; and to direct the 1st Respondent to forthwith constitute the non-hereditary trust board for the 4th Respondent temple.

3. It is convenient, hereinafter, to refer to the parties in these writ petitions as they are arrayed in W.P. No. 27776 of 2005.

4. Facts, in brief, are that the 4th Respondent temple was established more than 400 years ago, and was managed by the Suraneni family of Mylavaram for several decades. After A.P. Act 30 of 1987 came into force the Commissioner, Endowments, vide proceedings dated 07.06.1989, recognized the 5th Respondent, and other members of his family, as the hereditary trustees of the 4th Respondent temple. The Assistant Commissioner, Endowments, vide proceedings dated 03.07.1996, recognised the 5th Respondent and five others as members of the founder family. Sri S.V. Sudhakar Rao, (the fifth Respondent herein), submitted a representation dated 21.08.2002 seeking exemption of the 4th Respondent temple from the application of Section 15 of A.P. Act 30 of 1987. The 2nd Respondent, by proceedings dated 25.11.2002, forwarded the request of the 5th Respondent to the Government for appropriate orders. The Government, (1st Respondent), vide memo dated 17.01.2003 rejected the proposal for exemption of the fourth Respondent temple from the operation of Section 15 of A. P. Act 30 of 1987. The fifth Respondent filed W.P. No. 16283 of 2003 questioning the action of the 1st Respondent in rejecting his representation, vide memo dated 17.01.2003, as illegal. The said Writ Petition was dismissed on 19.01.2004. W.A. No. 2429 of 2005, filed thereagainst, was dismissed by order dated 22.10.2007 granting liberty to the 5th Respondent to file a fresh Writ Petition on the same cause of action by incorporating additional facts, and taking additional grounds. Consequently W.P. No. 23870 of 2007 was filed.

5. In the meanwhile, W.P. No. 26236 of 2003 was filed to direct the Respondents not to constitute a board of trustees for the 4th Respondent temple. The said Writ Petition was dismissed by a Division bench of this Court by its order dated 08.01.2004. The 1st Respondent had issued a notification earlier, in G.O. Ms. No. 2291 dated 04.12.2003, inviting applications for constitution of the trust board. W.P. No. 250 of 2004 was filed questioning the said notification. This Court passed an interim order on 07.01.2004 that the constitution of the trust board would be subject to further orders. Thereafter W.P. No. 2517 of 2004 was filed seeking a direction to the 1st Respondent not to consider the names of seven individuals who had applied for appointment as trustees pursuant to the notification dated 04.12.2003. This Writ Petition was also dismissed by order

dated 11.02.2004. The Government issued memo dated 05.05.2005 for constitution of a non-hereditary trust board despite which no such board was constituted.

6. The Government issued another notification on 16.07.2007 against which W.P. No. 19950 of 2007 was filed. The said Writ Petition was referred to a Division bench which, by its order dated 27.03.2008, held that no competent authority, including the Government, had the power to issue directions to any another authority to cause publication or issue notice, in regard to the acts to be done, for which they alone were competent.

7. The Government issued the notification, in G.O. Rt. No. 2259 dated 17.12.2008, inviting applications from interested persons for constitution of a non-hereditary trust board for the fourth Respondent temple. Forms I and II, as prescribed under the A.P. Charitable and Hindu Religious Institutions and Endowments Appointment of Trustees Rules, 1987, (hereinafter called the "Rules"), were appended to the said notification. W.P. No. 28173 of 2008 was filed by the 5th Respondent to declare the action of the State Government, in issuing the said notification, as arbitrary and illegal. This Court, by order dated 26.12.2008, directed that no final orders be passed constituting the trust board pursuant to the notification dated 17.12.2008. Thereafter, by order dated 29.12.2008, this Court extended until further orders its earlier interim order dated 26.12.2008.

8. The Government again issued a notification, in G.O. Rt. No. 762 dated 24.5.2010, proposing to constitute a non-hereditary trust board for the 4th Respondent temple, accompanied by memo dated 24.5.2010. W.P. No. 12696 of 2010 was filed by the 5th Respondent to declare both G.O. Rt. No. 762 dated 24.05.2010, and the memo dated 24.05.2010, as arbitrary and illegal. This Court by its order dated 7.6.2010, while granting stay of impugned memo dated 24.5.2010 to the extent the Commissioner of Endowments was requested to take action for publication of the notification as envisaged under Rule 4 of the Rules, and also in any newspapers as envisaged under the proviso to Rule 4, observed that the said order would not preclude the Government, which was the competent authority, to cause publication of the notification as envisaged under Rule 4 of the Rules, and also in any newspaper as envisaged under the proviso to Rule 4 of the Rules.

9. Thereafter the Commissioner, vide memo dated 16.6.2010, communicated a copy of G.O. Rt. No. 762 dated 24.5.2010 to the Executive Officer of the 4th Respondent temple requesting him to take action as ordered by the Government, and affix the notice on the notice board of the temple and at other places as per Rules. W.P. No. 14354 of 2010 was filed by the 5th Respondent to declare the action of the Commissioner, Endowments in issuing proceedings dated 16.6.2010 as arbitrary and illegal. This Court, by order in W.P.M.P. No. 18058 of 2010 dated 23.06.2010, granted interim stay.

10. Oral submissions were put forth, and written arguments submitted by Sri P. Yadgir Rao, Sri P.S. Rajasekhar and the Learned Government Pleader for Endowments. As it is convenient, we shall examine the contentions urged by Counsel on either side under different heads.

PRELIMINARY OBJECTIONS:

11. Sri P. Yadgir Rao, Learned Counsel for the 5th Respondent, would submit that, since the sole Petitioner in W.P. No. 27776 of 2005 died during the pendency of the writ petition, it is liable to be dismissed as having abated.

12. W.P. No. 27776 of 2005 was filed in public interest seeking constitution of a non-hereditary trust board for the 4th Respondent temple in accordance with Section 15 of A.P. Act 30 of 1987. The grievance espoused therein is to the continuance of the 5th Respondent as a de-facto hereditary trustee, and the inaction of the Government in not constituting a board of nine trustees to manage the affairs of the 4th Respondent temple whose annual income, even by the year 2005-06, had exceeded Rs. 17.86 Crores. Ensuring compliance with the provisions of Section 15 of A.P. Act 30 of 1987, which mandates constitution of a board of nine trustees to manage and control the affairs of religious institutions or endowments whose annual income exceeds Rs. 1.00 crore, is in larger public interest. This writ petition is being listed from its inception, as a public interest litigation, before a Division Bench. Public interest litigation procedures may be adopted even in a case where initially the writ petition was filed as a private interest litigation, *Ashok Lanka and Another Vs. Rishi Dixit and Others*, ; *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, ; and *Indian Bank v. Godhara Nagrik Coop. Credit Society Ltd.* (2008) 12 SCC 541), and the Court in furtherance of larger public interest may consider it necessary to enquire into the state of affairs of the subject of the litigation in the interest of justice. *Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others*, ; *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, If the Court finds involvement of a public law element therein, concerning a large number of people, it may proceed on the basis as if it is a public interest litigation. (*Godhara Nagrik Coop. Credit Society Ltd.* (2008) 12 SCC 541). Under Rule 7-A(d) of the Writ Proceedings Rules, 1977, as amended and notified in the A.P. Gazette on 10.6.2010, it is open to the Court to entertain a writ petition filed in public interest, without reference to the interest of the Petitioner in the writ petition, if the subject matter of the complaint is of such a nature as to warrant adjudication of the case in larger public interest. As we are satisfied that the writ petition involves a public law element in ensuring exercise of control and management of the 4th Respondent temple by a board of nine trustees, and as this concerns several lakh devotees of the temple, we see no reason to dismiss the said writ petition merely for the reason that the sole Petitioner is no more.

13. Sri P. Yadgir Rao, Learned Counsel for the 5th Respondent, would submit that the writ petitions in this batch, other than W.P. No. 27776 of 2005, ought to have

been heard by a learned Single Judge of this Court, and listing these matters before a Division Bench would deny the 5th Respondent his right of appeal against the order of the Learned Single Judge. Unlike an appeal provided under a statute, which confers a right on the person aggrieved, it is the internal working of the High Court while splits it into different "benches" and yet the court remains one. A letters patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent bench, sitting as a court of correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single bench. *Baddula Lakshmaiah and Others Vs. Sri Anjaneya Swami Temple and Others*,

14. Among the other four writ petitions is W.P. No. 28173 of 2008 which, by order of the Hon'ble Chief Justice dated 19.12.2009, was directed to be listed before this Division bench. The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which inheres in him in the very nature of things. *State of Maharashtra Vs. Narayan Shamrao Puranik and Others*, The Chief Justice enjoys a special status, and has jurisdiction to decide which case will be heard by which Bench. *State of U.P. and Others Vs. Neeraj Chaubey and Others*, The Chief Justice of the High Court alone has the right and power to decide how benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear as also as which Judges shall constitute a Division Bench and what work those benches shall do. Judges of the High Court can sit alone or in Division Benches and do such work as may be allotted to them by an order of, or in accordance with the directions of, the Chief Justice. In the matter of constitution of benches, and making of the roster, he alone is vested with the necessary powers. *State of Rajasthan Vs. Prakash Chand and Others*, ; *Divine Retreat Centre Vs. State of Kerala and Others*, ; *Inder Mani and Others Vs. Matheshwari Prasad and Others*,

15. W.P. No. 27776 of 2005, which is filed seeking constitution of a non-hereditary trust board to the 4th Respondent temple, is a public interest litigation and can be heard only by a Division bench and not by a single judge. The other writ petitions, (wherein the repeated efforts of the Government to constitute a trust board, and its order rejecting the 5th Respondent's request that the 4th Respondent temple be exempted from the operation of Section 15(1) of the Act, are under challenge), are integrally connected with W.P. No. 27776 of 2005. An effective hearing of W.P. No. 27776 of 2005 would be possible only if it is heard along with the other writ petitions. We see no reason, therefore, to accede to the Petitioner's request for listing all the writ petitions in this batch, other than W.P. No. 27776 of 2005, before a Single Judge as no effective order can be passed in the public interest litigation without the other writ petitions being heard with it. Hearing of these writ petitions together would also avoid multiplicity of proceedings. The objection of the 5th Respondent, to the listing and hearing of these writ petitions by a Division Bench, therefore, necessitates rejection.

REJECTION OF THE 5th RESPONDENT'S REQUEST TO EXEMPT THE FOURTH RESPONDENT TEMPLE FROM THE OPERATION OF SECTION 15(1) OF THE ACT: (W.P. No. 23870 of 2007 and W.P. No. 12696 of 2010):

16. The notifications issued by the Government, inviting applications for constitution of a board of trustees for the 4th Respondent temple, is subjected to challenge by the 5th Respondent, among other grounds, that they were issued when his application u/s 154(c) of the Act, seeking exemption of the 4th Respondent temple from the operation of Section 15(1) of the Act, was pending consideration by the Government. The fifth Respondent's request for exemption was rejected by the Government by its orders dated 17.01.2003 and 24.05.2010. The order of rejection dated 17.01.2003 is under challenge in W.P. No. 23870 of 2007. The memo of rejection dated 24.05.2010, whereby the fifth Respondent's application for grant of exemption to the fourth Respondent temple from the operation of Sections 15 and 17. of the Act was rejected on the ground that entrusting the management of the affairs of an institution having crores of rupees as income in the hands of a single trustee was not desirable, and there was no possibility to include prominent donors as well as prominent trustees as envisaged in the Act, is under challenge in W.P. No. 12696 of 2010.

17. Sri P. Yadgir Rao, Learned Counsel for the fifth Respondent, would contend that the order of the Government dated 17.01.2003 is not a reasoned order; rejection of the application, without rhyme or reason, is arbitrary; the Government had not noticed the criteria laid down in memo dated 03.03.2003; one of the criteria for granting exemption was that the institution or endowment was well managed by the founder; that the subject institution is well managed by the fifth Respondent is evident from the report of the Commissioner dated 25.11.2002 whereby he had recommended grant of exemption; the Government had failed to consider the recommendations of the Commissioner, and has not assigned any reasons for rejecting the proposal of the Commissioner; and the action of the Government, in rejecting the application u/s 154(c) of the Act, is arbitrary, illegal and in violation of principles of natural justice, as the Petitioner was not given an opportunity of being heard.

18. Before its amendment by A.P. Act 33 of 2007, with effect from 3.1.2008, Explanation-I to Section 17(1) of A.P. Act 30 of 1987 defined "founder" to mean a person who had founded the institution or endowment, and was recognized as such by the authority competent to appoint trustees u/s 15 of the Act. After its amendment by Act 33 of 2007, Explanation I to Section 17(1) defines "founder" to mean (a) in respect of an institution or endowment existing at the commencement of A.P. Act 30 of 1987, the person who was recognized as the hereditary trustee under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966, (A.P. Act 17 of 1966), or a member of his family recognized by the competent authority; (b) in respect of an institution or endowment, established after such commencement, the person who has founded such institution or endowment or a member of his family and recognized as such

by the competent authority. We shall, therefore, proceed on the premise that the 5th Respondent is a "founder" under Explanation I to Section 17(1) of the Act.

19. The 5th Respondent's applications dated 27.08.2002 and 18.03.2007, u/s 154(c) of the Act, was to exempt the 4th Respondent temple from the operation of Section 15 of A.P. Act 30 of 1987 on the ground that it is being well managed by him as its "founder". What the 5th Respondent, in effect, seeks is that he be permitted to control and manage the affairs of the 4th Respondent temple without a board of trustees being constituted by the Government, u/s 15(1), to manage its affairs. In this context it is useful to read Section 15(1)(a) of Act 17 of 1966 in juxta it is useful to read Section 15(1)(a) of Act 30 of 1987:

ACT 17 OF 1966 ACT 30 OF 1987

Section 15(1)(a): Appointment of Board of Trustees and the term of office:- (1) In respect of a charitable or religious institution or endowment included in the list published under clause (a) of section 6(a) whose annual income exceeds rupees two lakhs, the Government may, in case where there is a hereditary trustee, and shall in any other case, constitute a Board of Trustees consisting of not less than seven and not more than eleven persons appointed by them, Section 15(1): Appointment of Board of Trustees: In respect of a Charitable or Religious Institution or Endowment- (1) Included in the list published under clause (a) of Section 6, where the income for the Institution exceeds Rupees one crore per annum, the Government shall constitute a Board of Trustees consisting of nine persons appointed by them;

20. While Section 15(1)(a) of A.P. Act 17 of 1966 conferred discretion on the Government not to constitute a board of trustees in cases where there was a hereditary trustee, the Government was mandated to constitute a board of trustees in case there was no hereditary trustee. While the first limb of Section 15(1)(a) of A.P. Act 17 of 1966 used the word "may", the second limb used the word "shall". The general rule is that when two different words are used in the same provision, these different words should be construed as carrying different meanings. *Kailash Nath Agarwal and Others Vs. Pradeshia Industrial and Investment Corporation of U.P. Ltd. and Another*, ; *The Member, Board of Revenue Vs. Arthur Paul Benthall*, ; *M/s. B.R. Enterprises Vs. State of U.P. and Others*, . When the situation has been differently expressed, the Legislature must be taken to have intended to express a different intention. *Commissioner of Income Tax, New Delhi (Now Rajasthan) Vs. East West Import and Export (P) Ltd., (Now Known as Asian Distributors Ltd.), Jaipur*, ; *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc.*, *Employment of the two monosyllables "may" and "shall" in the same provision must have two different imports. M/S. Mahaluxmi Rice Mills and Others Vs. State of U.P. and Others*, . The use of the word "may" in the first limb, and of the word "shall" in the second limb of Section 15(1)(a) of A.P. Act 17 of 1966, establishes the difference that, while the first limb gave a discretionary power, the second limb was mandatory. *Jamatraj Kewalji Govani Vs. The State of Maharashtra*, ; *T.R. Sharma Vs. Prithvi*

Singh and Others, . The term "shall", as used in the second limb of Section 15(1) (a) of A.P. Act 17 of 1966, in its ordinary significance is required to be interpreted as being obligatory or mandatory. Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, , Khub Chand and Others Vs. State of Rajasthan and Others, ; The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, . Section 16 of A.P. Act 30 of 1987 abolished the right to be appointed as a hereditary trustee. As a result the first limb of Section 15(1) of A.P. Act 17 of 1966, (which conferred discretion on the government not to appoint a board of trustees where there was a hereditary trustee), does not find mention in Section 15(1) of A.P. Act 30 of 1987. Like the second limb of Section 15(1)(a) of A.P. Act 17 of 1966, Section 15(1) of A.P. Act 30 of 1987 also uses the word "shall". Section 15(1) of A.P. Act 30 of 1987 must, therefore, be construed as mandatory, and the Government as being obligated to appoint a board of nine trustees to exercise control and manage the affairs of the fourth Respondent temple.

21. While A.P. Act 17 of 1966 continued the right of a hereditary trustee to control and manage the affairs of a religious institution or endowment, Section 16 of A.P. Act 30 of 1987 abolished the said right on the commencement of the Act on 23.5.1987. In view of Section 16 of A.P. Act 30 of 1987 the 5th Respondent cannot claim, as of right, that he should, in effect, continue to hold the office of a hereditary trustee, albeit under the guise of being a "founder". As he has been recognized as a "founder" his right, if any, is only to be appointed as one of the trustees in terms of Explanation I to Section 17(1) of the Act. He also has the right, u/s 20(1)(b), to be appointed as the chairman of the board of trustees on his being appointed a trustee. He does not, however, have any right to exclusively control and manage the affairs of the 4th Respondent temple.

22. u/s 154 of A.P. Act 30 of 1987 the Government may, by notification, exempt from the operation of any of the provisions of the Act, or any of the rules, the institutions or endowments mentioned in Clauses (a) to (d) thereunder. There is no reason why the word "may" occurring in Section 154 should not be given its ordinary meaning as denoting the conferment of a discretion on the Government, and be equated with "shall" so as to make it obligatory on it to grant exemption. Chinnamarkathian alias Muthu Gounder and Others Vs. Ayyavoo alias Periana Gounder and others, . The word "may" is an enabling word. A provision made for the purpose of enabling something to be done is usually expressed in permissive language. Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd., ; Craies on Statute Law, 5th Edn. at p. 263; Julius v. Bishop of Oxford (1880) 5 AC 214) Enabling words, such as "may", give a power which, prima facie, may be exercised or not. Even if the words used in the statute are prima facie enabling, the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right - public or private - of a citizen. L. Hirday Narain Vs. Income Tax Officer, Bareilly, ; Julius (1880) 5 AC 214). Enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right. Punjab Sikh Regular Motor Service, Moudhapara Vs. The Regional

Transport Authority, Raipur and Another, As Section 16 of A.P. Act 30 of 1987 has abolished hereditary rights, neither has the 5th Respondent any right to claim to be in exclusive control and management of the 4th Respondent temple nor is the Government duty bound to grant exemption, u/s 154(c) of the Act, merely to confer on the 5th Respondent a benefit which he has no right to claim.

23. An exemption provision such as Section 154(c) of the Act, which seeks to avoid the operation of main thrust of the Act, has to be strictly construed. State of West Bengal, etc. Vs. Ashutosh Lahiri and others, It is not possible for the statute itself to contemplate every contingency for grant of exemption, and make specific provision therefor. It is for this reason that a power of exemption in general terms is conferred on the government. The power given to the government, to exempt an institution from the operation of the Act, is not unguided, uncanalised or arbitrary, P.J. Irani Vs. The State of Madras, , and is to be exercised so as to advance the policy and objects of the Act according to the guidelines as may be gleaned from the preamble and other provisions of the Act. The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, ; Sardar Inder Singh Vs. The State of Rajasthan, . In interpreting a provision conferring power to grant exemption, from the operation of the provisions of a statute, the purpose of such exemption and the scope and the effect thereof, in the context of the purpose of the Statute, should be taken into consideration. Premium Granites and Another Vs. State of Tamil Nadu and Others, . Exercise of power of exemption is controlled by legislative policy and the purpose of the statute as indicated in its various provisions. The government should exercise its powers of granting exemption within this controlled path to subserve the policy and to achieve the objectives of the Act. A situation may arise, in some cases, where strict adherence to any of the provisions of the statute or the rules may result in great hardship. Where exercise of the power of exemption is to remove this hardship, without materially affecting the policy of the Act, then such exercise of power would be covered under it. The power of exemption is meant to be rarely used. The Consumer Action Group and Another Vs. State of Tamil Nadu and Others, . Exercise of discretion to grant exemption should be in accordance with law, and within the parameters of the text and legislative philosophy of A.P. Act 30 of 1987. A statutory functionary, operating under the legislative dicta of the provisions of A.P. Act 30 of 1987, is ordained to exercise his powers in accordance with the text and structure of the Act in order to advance the purposes of the legislation, in particular such of those provisions which are meant to preserve, protect and regulate the properties and management of a public religious institution. This legislative position can neither be subverted nor can the Government be disabled from performing its legitimate role in obedience to the commands of the legislation. Hitakarini Samaj, Rajahmundry Vs. State of Andhra Pradesh and others,

24. The object of A.P. Act 30 of 1987 is to consolidate and amend the law relating to the administration and governance of Hindu religious institutions and endowments in the State of Andhra Pradesh. As the title of the Act itself

indicates, it applies to all Hindu public religious institutions and endowments whether registered or not in accordance with the provisions of the Act. The pre-existing hereditary right in trusteeship was abolished prospectively from the date of commencement of the Act by Section 16 which intends to remove discrimination on grounds of heredity which would, otherwise, be violative of Article 15(1) of the Constitution of India. As it is inconsistent with Article 15(1), the legislature thought it fit to abolish hereditary trusteeship. Sections 17 to 19 recognise the general right of every qualified hindu to claim appointment as a trustee. It is with a view to effectuate proper and efficient management and governance of Hindu religious institutions and endowments, that A.P. Act 30 of 1987 was enacted. Section 15 was brought on the statute to effectuate the legislative policy of entrusting collective responsibility on a board of trustees for efficient and proper administration and management of Hindu religious institutions and endowments, instead of entrusting such responsibility to a single individual. Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another, Amongst the objects of the Act, as is evident from a conjoint reading of Sections 15, 16 and 144, is to divest hereditary trustees from both . the management of, and to claim a share in the hundi or other collections of, a religious institution or endowment; and to entrust the management of the religious institution or endowment to a board comprising of nine trustees including not only the donor, but also a woman, one member from the scheduled castes or the scheduled tribes, and one member from the backward classes. Section 18 of the Act, which prescribes the qualifications for being appointed as a trustee, ensures that it is only persons of good conduct, reputation, who command respect in the locality in which the institution is located, who have sufficient time and interest to attend to the affairs of the religious institution or endowment, and who have contributed for construction, renovation or development of an institution or performance of any Utsavam or Ubhayam or any charitable cause, are alone appointed as trustees of the religious institution or endowment. The provisions aforementioned are meant to ensure that a religious institution or endowment is well managed and the possibility of abuse of authority, (which is far more likely when an individual is entrusted with the control and management), is minimized by entrusting the control and management to a larger body of nine persons from varied social and economic backgrounds. The power conferred, u/s 154 of the Act, to grant exemption cannot be exercised if it would result in the policy and object of A.P. Act 30 of 1987, (more particularly those provisions which preserve, protect and regulate the properties and management of a public religious institution), being defeated.

25. The condition precedent for grant of exemption, u/s 154(c) of the Act, is that the institution or endowment is well managed by the founder. In case the institution or endowment is not well managed by the founder the Government is disabled, u/s 154(c) of the Act, from granting exemption. That does not, however, mean that in all cases, where a religious institution or endowment is well managed by the founder, the government should automatically grant

exemption, for grant of exemption, more particularly from the operation of Section 15 of A.P. Act 30 of 1987, is discretionary. It is open to the Government to refuse to grant exemption even in cases where the religious institution or endowment is well managed by the founder.

26. It is no doubt true that the order of the Government dated 17.1.2003, refusing to grant exemption, is not a reasoned order, and the rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice. The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, ; and S.N. Mukherjee Vs. Union of India, Providing for an opportunity of being heard is yet another facet of the rules of natural justice. Principles of natural justice are, however, applicable only in cases where there is some right which is likely to be affected. Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others, The 5th Respondent has no right to continue in exclusive control and management of the 4th Respondent-temple whose annual income, by his own admission in his application dated 18.03.2007, exceeded Rs. 17.86 crores even by the year 2005-2006. He cannot, therefore, plead violation of principles of natural justice as a ground to invalidate the order of the Government dated 17.1.2003 refusing to grant exemption. The said order does not necessitate being set at naught on the ground that it is bereft of reasons or that the fifth Respondent was not afforded an opportunity of being heard.

27. Even otherwise the 5th Respondent's request u/s 154(c) of the Act, for exemption of the 4th Respondent from the operation of Section 15(1), was again rejected by memo dated 24.5.2010 on the ground that it was not proper to entrust the management of the 4th Respondent-temple, having a large income, in the hands of a single individual; and grant of exemption would also disable appointment of a donor or a prominent person as one of the members of the board of trustees. It cannot be said that either of these two reasons, which formed the basis for the Government's refusal to grant exemption, does not accord with the provisions of the Act. The fifth proviso to Section 15 of A.P. Act 30 of 1987 stipulates that one of the members of the board of trustees should be a prominent donor with a long track record of philanthropy and support to a Hindu religious institution or endowment. As the object of Section 15(1) of A.P. Act 30 of 1987 is to entrust the control and management of a religious institution or endowment to a larger group of nine persons, instead of placing it in the hands of an individual, the Government memo dated 24.5.2010 refusing to grant exemption cannot be faulted. This Court, in exercise of its powers of judicial review under Article 226 of the Constitution of India, would neither sit in appeal over orders of the Government refusing to grant/granting exemption u/s 154 of the Act, nor would it substitute its views for that of the Government. This Court would be loathe to interfere with such orders as long as the reasons for refusal to grant exemption are reasonable, and accord with the provisions of A.P. Act 30 of 1987. The 5th Respondent's challenge to the orders of the Government, rejecting his request for exempting the fourth Respondent temple from the

operation of Section 15 of the Act, must therefore fail.

DISCRIMINATION:

28. Sri P. Yadgir Rao, Learned Counsel for the fifth Respondent, would submit that the Government had erred in rejecting the application seeking exemption without treating all applications equally, and without discrimination and arbitrariness; and the action of the Government in granting exemption to several institutions, and in refusing exemption to the subject institution, was discriminatory and opposed to Article 14 of the Constitution of India. Learned Counsel would rely on *Centre for Public Interest Litigation v. Union of India*, 1995 Supp (3) SCC 382; *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, ; *Common cause, A Registered society (petrol pump matter) v. Union of India* 1996 (6) SCC 530 ; and *Ashutosh Gupta Vs. State of Rajasthan and Others*, .

29. As rightly contended by the Learned Counsel, equality before the law means that the law should be equally administered and likes should be treated alike. Article 14 enjoins that the people similarly situated should be treated similarly *Ashutosh Gupta Vs. State of Rajasthan and Others*, ; it requires that State action must not be arbitrary but must be based on some rational and relevant principle which is nondiscriminatory. *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*,

30. It is evident from the several orders, made part of the record by the 5th Respondent, that the Government has exempted several other institutions and endowments from the operation of the provisions of A.P. Act 30 of 1987. While the power to grant exemption u/s 154 is no doubt discretionary, exercise of discretion must be in conformity with law and should exclude the likelihood of arbitrariness. The area of discretion should be minimized regulating its exercise in accordance with settled norms and guidelines. *Centre for Public Interest Litigation v. Union of India*, 1995 Supp (3) SCC 382 A discretionary power, which is capable of being exercised arbitrarily, is not permitted by Article 14 of the Constitution of India. (*Common Cause, A Registered Society (Petrol pumps matter* 1996 (6) SCC 530).

31. Before a claim based on the equality clause is upheld, it must be established by the applicant that his claim, being just and legal, has been denied, while it has been extended to others, and in this process there has been a discrimination. *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, The mere fact that the authority has passed a particular order in the case of another person similarly situated can never be a ground for issuing a writ in favour of the applicant on the plea of discrimination. It is more appropriate to examine the entitlement of the person before the Court to the relief asked for in the facts and circumstances of his case, than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the court nor is his case. *Chandigarh Administration and another Vs.*

Jagjit Singh and another, ; Shanti Sports Club and Another Vs. Union of India (UOI) and Others, When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the person who has approached the court has established a right entitling him to the relief sought in the facts and circumstances of the case. In the context of such examination the fact that some others, who are similarly situated, have been granted relief which the applicant is seeking, may be of some relevance. But where in law the applicant has not established a right, or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing negative equality by perpetuation of an illegality which is impermissible in law. Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others,

32. As noted hereinabove, A.P. Act 30 of 1987 does not confer on the 5th Respondent any right to claim that the fourth Respondent should be exempted from the operation of Section 15(1) thereof. Further, none of those who were granted exemption u/s 154 of the Act have been arrayed as Respondents in these writ proceedings. The plea of discrimination does not, therefore, merit acceptance.

NOTIFICATIONS ISSUED BY THE GOVERNMENT INVITING APPLICATIONS FOR CONSTITUTION OF A NON-HEREDITARY TRUST BOARD FOR THE FOURTH RESPONDENT TEMPLE:

33. W.P. Nos. 28173 of 2008, 12696 of 2010 and 14354 of 2010 are filed by the 5th Respondent questioning the notifications and the memos issued by the Government for constitution of a trust board for the 4th Respondent temple. In view of the subsequent notification in G.O. Rt. No. 762 dated 24.05.2010, the earlier notification in G.O. Rt. No. 2259 dated 17.12.2008 no longer remains in force. W.P. No. 28173 of 2008, wherein G.O. Rt. No. 2259 dated 17.12.2008 is subjected to challenge, has become infructuous and is, accordingly, dismissed.

34. In so far as W.P. No. 12696 and 14354 of 2010 are concerned Sri P. Yadgir Rao, Learned Counsel for the fifth Respondent, would submit that the memo dated 24.05.2010 merely directs the Commissioner to take necessary action for causing publication of the notification as envisaged under Rule 4, and in any of the newspapers as envisaged under the proviso to Rule 4 of the Rules; G.O. Rt. No. 762 dated 24.05.2010, and the accompanying memo dated 24.05.2010, are in disregard of the order of the Division bench in W.P. No. 19950 of 2007; and they are not in accordance with Rule 4 of the Rules.

35. Section 17 of A.P. Act 30 of 1987 prescribes the procedure for appointment of trustees and their term. u/s 17(3), the procedure for calling for applications, for appointment of trustees, verification of antecedents, and other matters, shall be such as may be prescribed. Rule 4(1) of the Rules requires the authority,

competent to appoint trustees under Rule 3, to cause publication of the notice in Form-I. Under Rule 4(2) the notice, referred to in Sub-rule (1), shall be affixed (i) on the notice board of the office or on the front door of the institution or endowment or in any conspicuous place where there is no institution, (ii) on the notice board of the Sarpanch, Mandal Revenue Officer, Municipal Office, as the case may be, and (iii) on the notice board of the office of the Commissioner, Regional Joint Commissioner, Deputy Commissioner, Assistant Commissioner, and Inspector as the case may be. Under the proviso to Rule 4(2), the competent authority may also, by order, cause publication of the notice in any daily newspaper in the language of the locality at the cost of the institution or endowment if it is situated in big cities, and is capable of meeting the cost of publication. Form I reads as under:

FORM-I (See Rule 4(1))

Notice No.

Dated 20

Name of the Institution: Sri

Village Mandal

District

It is hereby informed that a Trust Board will be constituted to Sri...Village....Mandal....District....by the Government/Commissioner/Regional Joint Commissioner/Deputy Commissioner/Assistant Commissioner, Endowments Department....under Section 15 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) after twenty days from the date of this Notice....

Interested persons may send their applications for trusteeship in the prescribed proforma vide Form II of the rule u/s 17(3) within twenty days from the date of this notice to...

36. The scope and ambit of Rule 4(1) of the Rules, which requires the competent authority to "cause publication" of the notice in Form I, fell for consideration in S.V. Sudhakara Rao Vs. The Government of Andhra Pradesh and Others, and a Division bench of this Court opined:

...However, by keeping the whole scheme of the Act and the framework within which the entire hierarchies constituted vis-vis the categories of institutions depending on income only and especially providing for different competent authorities for exercise of powers in respect of each of such institutions, necessarily Rule 4 has to be read in the background thereof and the language as used therein. Therefore, the expression "cause publication" cannot simply be taken away or put it in any distinct or different use or interpretation. The very expression "cause publication" is a qualified one and the provision itself starts with reading that the authority competent to appoint shall cause publication

which necessarily means and takes in only one way of interpretation i. e. , conferring power to cause such publication by the said authority alone but not to delegate the same to any other authority. Further, any such notice or format as contemplated under Form-I necessarily has to be only in the name of such competent authority but not otherwise or by any other authority other than the competent one. Therefore, it is not a ministerial act, which is sought to be delegated to at the lowest rung for any formal implementations or exemptions. Thus, the question of publication by any other authority other than the competent is not the one, which is intended and in fact could defeat the very scheme of the Act. Thus, we regret that we are not in agreement with the view taken by the learned single Judge in the aforesaid judgment. It is now well settled that any interpretation of the provision should stick to the expression as used in the statute and any exercise of power should be in the manner as conferred there under rather than by making any amends thereto. In the circumstances, we hold that the expression "cause publication" cannot be different from to do or to give effect or to exercise as sought to be put by the learned single Judge in the aforesaid decision. The said expression thus takes in the power to act and power to give effect to rather than making it a mere a ministerial act, which can be delegated to the lowest rung. In view of the aforesaid reasons, we hold that on a reading of Section 15 of the Act and the scheme as contemplated in respect of various institutions and different categorizations and different competent authorities, the only conclusion which the said Rule 4 (1) can be made is that the competent authority alone who has to cause publication in notice in Form-I but not by any other authority. All the institutions are made in three distinct clauses depending on the income and separate authority is constituted for exercise of all powers and control independently. Therefore, there is no scope for transgression by one authority or the other, however, high or low in rank may be. It is now well established that the letter of the statute should be given effect to rather than breaking it and giving scope for any other interpretation unintended. There is a clear distinction in regard to the specific powers which statute confers any authority, the exercise of which is mandatory. Keeping the purpose for which the provision is intended viz. , the constitution of trust board necessarily all acts in pursuance thereof should be with the same authority. Further any constitution of the trust board is only after due publications to be made by the competent authority and the same cannot be issued or published by any other authority. The publication totally stands different from the other incidental institution of service of notices as a ministerial act. Therefore, causing of the publication would not include ministerial execution thereof, but necessarily means only the publication thereof. Thus, there is absolutely no justification to take away those expressions and to give a different interpretation allowing such publication to be given effect to or made by any other authority. Therefore, no such competent authority including the Government has any power to issue any direction to any other authorities down below to cause such publications or issue notice in regard of the acts to be done, for which they alone are competent....

(emphasis supplied).

37. The words "cause publication" in Rule 4(1) has been construed, in S.V. Sudhakara Rao Vs. The Government of Andhra Pradesh and Others, as requiring the competent authority (in this case the Government) to itself publish the notice. The word "cause" is defined in Blacks Law Dictionary to mean "to be the cause or occasion of; to effect as an agent; to bring about; to bring into existence; to make to induce; to compel". In this context, reference can usefully be made to Section 68-C of the Motor Vehicles Act, 1939 which reads as under:

Preparation and publication of scheme of road transport service of State transport undertaking:

Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the official Gazette and also in such other manner as the State Government may direct.

38. While examining the scope of Section 68-C afore-extracted the Supreme Court, in Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation, held:

... Section 68C empowers only the State Transport Undertaking to prepare a schedule and cause every such scheme to be published in the official Gazette and also in such other manner as the State Government may direct. The scheme, therefore, need not be directly published by the Corporation, but it may, cause it to be published in the official Gazette. The act of publishing in the official Gazette is a ministerial act. It does not involve any exercise of discretion. It is only a mechanical one to be carried out in the course of day to day administration. So understood, there cannot be any difficulty in holding that it was purely a ministerial act which the Chief Executive Officer by reason of the aforesaid resolution can discharge u/s 12(c) of the Road Transport Corporations Act. It must be presumed for the purpose of this case that the Corporation decided the terms of the proposed schemes and the said decision must have been duly authenticated by the Chairman or any other member authorized by the Corporation in this behalf and the Chief Executive Officer did nothing more than publish the said scheme in exercise of its administrative functions. We, therefore, hold that the Chief Executive Officer was well within his rights in publishing the

said proposed schemes in the Andhra Pradesh Gazette.

(emphasis supplied).

39. From the judgment of the Supreme Court, in *Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation*, it is evident that "causing publication" is a ministerial act which the Government need not, by itself, discharge and can direct that it be discharged by a subordinate officer. As long as the notice in Form I is issued by the Government, the ministerial act of "causing publication" can be discharged by any other subordinate officer or authority.

LAW DECLARED BY THE SUPREME COURT IS BINDING NOTWITHSTANDING A JUDGMENT OF A CO-ORDINATE BENCH OF THE HIGH COURT TO THE CONTRARY:

40. The Division Bench judgment of this Court, in *Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation*, runs contrary to the law declared by the Supreme Court in *S.V. Sudhakara Rao Vs. The Government of Andhra Pradesh and Others*, In the hierarchical system of courts it is necessary for each lower tier, including the High Court, to accept loyally the decisions of the higher tiers. The judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted. The better wisdom of the court below must yield to the higher wisdom of the court above. That is the strength of the hierarchical judicial system. Under Article 141 of the Constitution the law declared by the Supreme Court shall bind all courts within the territory of India and, under Article 144, all authorities, civil and judicial in the territory of India, shall act in the aid of the Supreme Court. *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, *Cassell and Co. Ltd. v. Broome* (1972) AC 1027 ; *Siliguri Municipality and Others Vs. Amalendu Das and Others*, The law declared by the Supreme Court binds all Courts in India (*Rajeswar Prasad Misra v. State of W.B* AIR 1965 SC 1887).

41. In *Nirmal Jeet Kaur Vs. The State of Madhya Pradesh and Another*, the Supreme Court referred with approval to the observations in *Young v. Bristol Aeroplane Co. Ltd* (1944 (2) All ER 293) that the "quotable in law" is avoided if it is rendered in ignorance of binding authority. A similar view has been expressed by the Supreme Court in *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, ; and *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, It is well to remember that, on the law having been declared by the Supreme Court, it is the duty of the High Court, whatever be its view, to act in accordance with Article 141 of the Constitution of India and to apply the law laid down by the Supreme Court. Judicial discipline to abide by the declaration of law of the Supreme Court cannot be forsaken by any Court, be it even the highest Court in a State, oblivious of Article 141 of the Constitution of India. (*Chandra Prakash v. State of U.P.* (2002) 4 SCC 234 ; *State of Orissa Vs. Dhaniram Luhar*,

Decisions of the Supreme Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because, in doing so, they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent promotes certainty and consistency in judicial decisions. (Chandra Prakash (2002) 4 SCC 234).

42. In *Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another*, the Supreme Court observed:

...Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see *Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur*, and AIR 1973 SC 794 : AIR 1973 SC 794). When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See *Narinder Singh Vs. Surjit Singh*, and *Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another*,

(emphasis supplied).

43. The opinion of the Division bench, in *Dosa Satyanarayanamurthy etc. Vs. The*

Andhra Pradesh State Road Transport Corporation, was rendered in ignorance of the judgment of the Supreme Court in S.V. Sudhakara Rao Vs. The Government of Andhra Pradesh and Others, It needs no emphasis that it is the judgment of the Supreme Court, in S.V. Sudhakara Rao Vs. The Government of Andhra Pradesh and Others, which binds us notwithstanding the Division bench judgment of this Court in Dosa Satyanarayanamurthy etc. Vs. The Andhra Pradesh State Road Transport Corporation,

44. A bare perusal of the memo of the Commissioner dated 16.6.2010 would show that it is only the requirement of affixture of the notice, on the notice board and in other places, which has been delegated to the Executive officer of the 4th Respondent temple. The notification of the Government in G.O. Rt. No. 762 dated 24.5.2010 is issued by the Government itself as also the notice in Form I. The proceedings of the Commissioner dated 16.6.2010 is in compliance with Rule 4, and not contrary thereto. We see no reason, therefore, to uphold the contention of Sri P. Yadgir Rao, Learned Counsel for the 5th Respondent, that the proceedings of the Commissioner dated 16.6.2010 is illegal.

ADMINISTRATIVE GUIDELINES CANNOT BE ENFORCED IN WRIT PROCEEDINGS:

45. The Government memo dated 3.3.2003 was issued on the application of Smt. Ankamma Estates, Bapatla seeking exemption under Sections 15 and 29 of A.P. Act 30 of 1987. The Commissioner of Endowments was requested by the Government to check certain aspects before sending proposals in respect of exemption from Section 15 and 29 of A.P. Act 30 of 1987. The memo dated 03.03.2003 is more in the nature of a check list for the Commissioner, and are not conditions for grant of exemption. Even otherwise the said memo is more in the nature of administrative guidelines, and the power of the Government to issue them is not referable to any provision of A.P. Act 30 of 1987 or the rules made thereunder. These guidelines do not have statutory force and cannot, therefore, be enforced in proceedings under Article 226 of the Constitution of India. J.R. Raghupathy and Others Vs. State of A.P. and Others, ; and Union of India and Others Vs. S.L. Abbas,

IS THE ACTION OF THE GOVERNMENT MALAFIDE?

46. Sri P. Yadagir Rao, Learned Counsel for the 5th Respondent, would submit that, issuance of the notification dated 24.05.2010, and the memo dated 24.05.2010, is malafide as another memo dated 24.05.2010 was issued rejecting the 5th Respondent's application to exempt the 4th Respondent from the operation of Section 15(1) of A.P. Act 30 of 1987. The said contention is only to be noted to be rejected. It has been the 5th Respondent's grievance, in the earlier Writ Petitions filed by him, that no notification can be issued inviting applications for constitution of a board of non-hereditary trustees since his application u/s 154 of the Act was pending before the Government. Now that the Government has, by its memo dated 24.05.2010, passed areasoned order rejecting the application of the 5th Respondent for grant of exemption, the fifth

Respondent contends that the action of the Government is malafide.

47. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is malafide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*,

48. Except for a bald averment, no material is placed before this Court to support the allegations of malafides. Mere use of the word "malafide" by the fifth Respondent would not, by itself, make the writ petition entertainable. *Parbodh Sagar Vs. Punjab State Electricity Board and Others*, Allegations of malafide essentially raise a question of fact. It is, therefore, necessary for the person making such allegations to supply full particulars in the petition. If sufficient averments and requisite materials are not on record, the court would not make a "fishing" or a "roving" inquiry. Mere assertion, vague averment or bald statement is not enough to hold the action to be malafide. It must be demonstrated by facts. Moreover, the burden of proving malafide is on the person levelling such allegations and the burden is "very heavy". The charge of malafide is more easily made than made out. It is the last refuge of a losing litigant *E.P. Royappa Vs. State of Tamil Nadu and Another*, ; *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, ; *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, and *Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttaranchal and Others*, Vague allegations of malafides are not enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not proof to the hilt. The abuse of authority must appear to be reasonably probable. *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, There has to be strong and convincing evidence to establish allegations of malafides specifically and definitely alleged in the petition. The presumption under law is in favour of the bonafides of the order unless contradicted by acceptable material. *Chandra Prakash Singh and Others Vs. Chairman, Purvanchal Gramin Bank and Others*, ; *First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another*,

49. While exercising the power of judicial review, the High Court should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of malafides is always on the person who moves the court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to malafides. The Court should resist the temptation of drawing dubious inferences of malafides or bad faith on the basis of vague and bald allegations or inchoate pleadings. *Jasbir Singh Chhabra and Others Vs. State of Punjab and Others*, This contention of the fifth Respondent also necessitates rejection.

ACT OF COURT SHALL PREJUDICE NO ONE:

50. Sri P. Yadgir Rao, Learned Counsel for the 5th Respondent, would submit that both under G.O. Rt. No. 762 dated 24.05.2010, and the memo dated 24.05.2010, applications for trusteeship are required to be submitted within twenty days from the date of the notification dated 24.05.2010; by the date of issuance of the memo dated 16.06.2010 neither the notification nor Form I were published; the twenty days time, stipulated in Form I, had already expired by then; and as such is ultra vires the Rules.

51. In exercise of its powers u/s 15(1) of A.P. Act 30 of 1987, read with Rule 4(1) of the Rules, the Government issued G.O. Rt. No. 762 dated 24.05.2010 inviting applications from interested persons for constitution of a non-hereditary trust board to the 4th Respondent temple. The Commissioner was required, vide memo dated 24.05.2010, to take necessary action for causing publication as envisaged under Rule 4, and also in any newspapers as envisaged under the proviso to Rule 4 of the Rules. The 5th Respondent questioned both the notification dated 24.5.2010, and the memo dated 24.5.2010, before this Court in W.P. No. 12696 of 2010 and, as a result of the interim order passed on 07.06.2010 in W.P.M.P. No. 15979 of 2010, the Commissioner was disabled from complying with the directions of the Government in its memo dated 24.5.2010, and was unable to cause publication in terms of sub-rules (1) and (2) of Rule 4 of the Rules. The interim order of this Court dated 07.06.2010 is well within the twenty day period prescribed in Form-I enclosed to G.O. Rt. No. 762 dated 24.5.2010. But for the interim order, passed in W.P.M.P. No. 15979 of 2010 dated 7.6.2010, the Commissioner could have proceeded to cause publication forthwith in accordance with Rules 4(1) and (2) of the Rules. It is only after receipt of a copy thereof, that the Commissioner examined the interim order of this Court dated 7.6.2010 and, thereafter, issued the memo dated 16.6.2010 in compliance therewith. The memo of the Commissioner dated 16.06.2010 was also subjected to challenge by the fifth Respondent in W.P. No. 14354 of 2010. This Court, by order in W.P.M.P. No. 18058 of 2010 dated 23.06.2010, granted interim stay of the memo dated 16.06.2010, the earlier notification of the Government in G.O. Rt. No. 762 dated 24.05.2010, and the Government memo dated 24.05.2010. As a result of the interim order passed in the aforesaid two Writ Petitions filed by the fifth Respondent the Commissioner, Endowments was disabled from forthwith causing publication in accordance with sub-rules (1) and (2) of Rule 4 of the Rules.

52. Having obtained an interim order, because of which the notice in Form I could not be published and applications could not be received within the 20 day period, it is not open to the 5th Respondent to now contend that as the twenty days period stipulated in Form I, annexed to G.O. Rt. No. 762 dated 24.5.2010, for submission of applications had expired the memo dated 16.06.2010 should be set aside. A party cannot be allowed to take the benefit of his own wrong by getting an interim order in a Writ Petition which is ultimately dismissed. The maxim "actus curiae neminem gravabit", which means that the act of Court shall prejudice no one, becomes applicable. In such a situation the Court is under an

obligation to undo the wrong done to a party by the act of Court. Any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, ; A.R. Sircar (Dr) v. State of U.P., 1993 Supp.(2) SCC 734; Shiv Shankar and Others Vs. Board of Directors, U.P.S.R.T.C. and Another, ; Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and another Vs. Sree Kumar Tiwary and another, ; M/S. GTC Industries Limited Vs. Union of India and Others, and Jaipur Municipal Corporation Vs. C.L. Mishra, No person can suffer from the act of the Court. In case an interim order has been passed and the Petitioner takes advantage thereof, and ultimately the petition stands dismissed, interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized. Ram Krishna Verma and Others Vs. State of U.P. and Others, ; Grindlays Bank Limited Vs. Income Tax Officer, Calcutta and Others, ; Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another,

53. A party who succeeds ultimately is to be placed in the same position it would have been if the Court had not passed the interim order, Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another, otherwise litigation may turn into a fruitful industry and unscrupulous litigants may feel encouraged to approach Courts persuading it to pass interlocutory orders favourable to them. If the concept of restitution is excluded, from its application to interim orders, the litigant would stand to gain by swallowing the benefits of an interim order even though the battle has been lost at the end. This cannot be countenanced. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court. The test is whether an act of the party persuading the Court to pass an order, held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. The injury, if any, caused by the act of the Court shall be undone. Any opinion to the contrary would lead to unjust if not disastrous consequences. South Eastern Coalfields Ltd. Vs. State of M.P. and Others, ; Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others,

54. We, therefore, direct that the Government shall forthwith proceed in furtherance of G.O. Rt. No. 762 dated 24.05.2010, the consequential memo dated 24.05.2010 and the Commissioner's memo dated 16.06.2010, and constitute a non-hereditary board of trustees for the 4th Respondent temple.

CONCLUSION:

55. Viewed from any angle the challenge to the Government notification in G.O. Rt. No. 762 dated 24.05.2010, the consequential memo of the Government dated 24.05.2010, and the Commissioner's memo dated 16.6.2010, must fail.

Likewise the challenge to the Government orders dated 17.01.2003 and 24.05.2010, rejecting the 5th Respondent's application to exempt the 4th Respondent temple from the operation of Section 15(1) of the Act, must also fail. W.P. No. 27776 of 2005 is allowed. W.P. Nos.23870 of 2007, 28173 of 2008, 12696 of 2010 and 14354 of 2010 are dismissed. No costs.