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(2009) 3 ALD 107 : (2009) 2 ALT 736

Andhra Pradesh High Court

Case No: Writ Petition No. 26804 of 2008

Poojar Gururajachar and Others	APPELLANT
Vs	
State of Andhra Pradesh and Others	RESPONDENT

Date of Decision: Dec. 30, 2008

Acts Referred:

- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 - Section 144, 153, 34, 34(1), 34(2)
- Constitution of India, 1950 - Article 14, 19, 21

Citation: (2009) 3 ALD 107 : (2009) 2 ALT 736

Hon'ble Judges: N.V. Ramana, J

Bench: Single Bench

Advocate: K.R. Prabhakar, for the Appellant; A.G. for G.P. for Endowments for Respondents Nos. 1 to 3 and P.V.R. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.V. Ramana, J.
The petitioners are Archakas in Sri Raghavendra Swamy Moola Brundavanam of Sri Raghavendra Swamy Mutt, Mantralayam (hereinafter referred to as "the Mutt"). They filed the writ petition questioning the notice dated 22.11.2008, issued by respondent No. 4-Mutt as being arbitrary, illegal, irrational, unjust and violative of Articles 14, 19 and 21 of the Constitution of India, apart from being contrary to the provisions of Section 34(3) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as "the Endowments Act") and contrary to the well established customary rights.

2. The learned Counsel for the petitioners submitted that the petitioners are hereditary Archakas in the Mutt. According to him, the hereditary rights of Archakas, which stood abolished by virtue of Section 34(1) of the Endowments Act, are not (sic. are) sought to be restored by adding Sub-section (3) to Section 34 of the Endowments Act by Act 33 of 2007, which came into force w.e.f. 03.01.2008. He submitted that by virtue of the newly added Sub-section (3) to Section 34 of the Encowments Act, the petitioners who were doing archakatvam service at the time of repeal of 1966 Endowments Act, are entitled to continue to have the same rights of archakatvam. Hence, he submitted that the impugned notice, issued by respondent No. 4-Mutt, which calls upon all the Archakas to submit their Bio-Datas, for the purposes of selecting suitable and qualified candidates for appointment as Archakas, runs contrary to the provisions of Section 34(3) of the Endowments Act, for it seeks to disturb the petitioners as Archakas. Hence, he prayed that the impugned notice issued by respondent No. 4-Mutt, be set aside and the writ petition be allowed.

3. The learned Advocate General appearing on behalf of the respondents submitted that hereditary rights of Archakas and other office holders which were abolished by Section 34(1) of the Endowments Act, was upheld by the apex Court in A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, Consequent to abolition of hereditary rights of Archakas, most of the families of Archakas faced financial problems, and considering this plight of the families of Archakas engaged in archakatvam, the apex Court in LA. No. 7 in W.P. (C) No. 638 of 1987 and in LA. No. 3 in Transfer Case No. 170 of 1987, gave certain directions stressing the need to preserve the customs and usage with a view to protect the sanctity of religious rituals. With a view to give effect to this order, the Government after consulting all the political parties, amended the Endowments Act by Act 33 of 2007 by inserting among others Sub-section (3) in Section 34, Sub-section (4) in Section 35 and Section 65-A in the Endowments Act, which came into force w.e.f. 03.01.2008.

4. He denied that the newly added Sub-section (3) to Section 34 of the Endowments Act, had restored the hereditary rights that stood abolished by virtue of Section 34(1) of the Endowments Act. He submitted that Sub-section (3) of Section 34 of the Endowments Act, sought to protect the rights of qualified members of the archaka families which continued archakatvam service under the repealed 1966 Endowments Act and recognized as such by the competent authority, by giving them right to archakatvam, without any right to emoluments which they received under 1966 Endowments Act, but subject to receipt of emoluments in accordance with the scheme to be framed u/s 144 of the Endowments Act. With a view to give effect to this provision, the competent authority fixed the cadre strength for respondent No. 4-Mutt, as provided under Sub-section (4) of Section 35 of the Endowments Act and the payment of salaries and emoluments to the said cadre would be met from the fund to be created u/s 65-A of the Endowments Act, and vested in respondent No. 3-Commissioner of Endowments.

5. He submitted that the Government in exercise of power conferred on them u/s 35(4) read with Section 153 of the Endowments Act, framed Rules known as A.P. Charitable

and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000 (hereinafter referred to as "the Service Rules"), and notified them in G.O. Ms. No. 888, Revenue (Endowments.), dated 08.12.2000, which among others provided for appointing authority, fixation of cadre strength, qualifications, disqualifications, age of recruitment, age of superannuation, seniority, promotion etc. Now that the fund as provided u/s 65-A of the Endowments Act has been created, respondent No. 3-Commissioner of Endowments has fixed the cadre strength to respondent No. 4-Mutt, and it is for filling up the qualified members as provided under Sub-section (3) of Section 34 of the Endowments Act, respondent No. 4-Mutt issued the impugned notice, which cannot be said to be contrary to the provisions of Sub-section (3) of Section 34 of the Endowments Act nor Sub-section (3) of Section 34 can be said to have restored the hereditary rights that stood abolished by Section 34(1) of the Endowments Act. Hence, he submitted that the writ petition be dismissed, else it would amount to nullifying the provisions of Sub-section (3) of Section 34 of the Endowments Act.

6. Heard the learned Counsel for the petitioners and the learned Advocate General for the respondents.

7. In the light of the arguments advanced, the only question that arises for consideration in the writ petition is - Whether by insertion of Sub-section (3) in Section 34 of the Endowments Act, the hereditary rights of Archakas and other Officer Holders, which were abolished by virtue of Section 34(1) of the Endowments Act, stood revived?

8. The Charitable and Hindu Religious Institutions and Endowments, were initially governed by the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966. However, difficulties were experienced in implementation of some of its provisions, and many representations were made for removal of the said difficulties. Acting on the representations from the general public about the functioning of Charitable and Hindu Religious Institutions, and the management of their properties, and the difficulties being faced, the Government of Andhra Pradesh, constituted a Commission headed by Sri Justice Challa Kondaiah, former Chief Justice of Andhra Pradesh High Court, inter alia to review and suggest measures for better management of properties of institutions and endowments, utilization of funds for their benefits, nature of rights held by hereditary Archakas, Mirasidars and other holders of temples etc., payment of emoluments to such office holders and servants while ensuring that religious worship is performed according to the Agamas and Customs.

9. The Commission, having held. a detailed enquiry, submitted its report on 28.02.1986. The Government, having considered the report and the recommendations made therein, accepted the same with certain modifications. Thereupon, the Government proposed to enact a comprehensive law providing for better management of the properties and utilization of funds of the institutions and endowments, abolishing the hereditary rights of Archakas, Miracidars and other servants without disturbing the present incumbents but to continue them on regular cadre in their place and to afford proper training to the existing

Archakas and to other servants of the institutions and endowments wherever necessary, and accordingly, enacted the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987, which inter alia abolished the hereditary rights of Archakas and other Office Holders.

10. Admittedly, the validity of Sub-section (1) of Section 34 of the Endowments Act, which abolished hereditary rights of Archakas and other Office Holders, was upheld by the apex Court in A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, . However, the respondents state that they received numerous complaints highlighting the plight of the families of the traditional Archakas becoming impoverished and the customs and usage and sanctity of religious rituals taking a back seat. To mitigate the hardship of the Archakas, applications were filed, and the apex Court in I.A. No. 7 in W.P. (C) No. 638 of 1987 and in I.A. No. 3 in Transfer Case No. 170 of 1987, gave certain directions stressing the need to preserve the customs and usage with a view to protect the sanctity of religious rituals. Pursuant to the said order, it appears that the Government held discussions with all the political parties and decided to amend the Endowments Act, in a manner which would preserve the customs and usage and protect the sanctity of religious rituals. On the basis of such decision, the Government have amended the Endowments Act, by Act 33 of 2007, which came into force w.e.f. 03.01.2008. Act 33 of 2007, which seeks to remove the difficulties which cropped up by reason of abolition of hereditary rights, which resulted in the sanctity of the religious rituals being lost, inter alia inserted Sub-section (3) in Section 34, Sub-section (4) in Section 35 and Section 65-A in the Endowments Act.

11. The petitioners, in fact, are seeking to give effect to the provisions of Section 34(3) of the Endowments Act, but it is their case that the impugned notice issued by respondent No. 4-Mutt, which called upon all the Archakas to submit their Bio-Datas, is not in consonance with the provisions of Section 34(3) of the Endowments Act. To consider this question, it would be appropriate to refer to the provisions of Sub-section (3) of Section 34 of the Endowments Act, which reads as under:

Notwithstanding anything contained in Sub-sections (1) and (2) of this section, the qualified members of those Archakas families which were continuing in archakatvam service under the provisions of the repealed the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 and recognized as such by the competent authority shall continue to have the right to archakatvam without having any right to emoluments such families used to receive earlier under Act 17 of 1966. However, they shall receive emoluments in accordance with the scheme u/s 144.

12. From a reading of the above, it would become clear that even though Sub-sections (1) and (2) of Section 34 of the Endowments Act, abolished the hereditary rights of Mirasidars, Archakas and other office holders and servants, the fact remains, the archakas who seek to claim the benefit of Sub-section (3) of the Endowments Act, for continuing as archakas, have to satisfy four conditions, namely (1) he must be a member

of Archaka family, (2) he should be a qualified archaka, (3) he must have continued archakatvam as on the date of repealing of 1966 Endowments Act, (4) he should be recognized as archaka by the competent authority. Unless the Archakas claiming the benefit of Sub-section (3) of Section 34 of the Endowments Act, satisfy the four qualifications, they cannot continue to have the right to archakatvam. Further, those who qualify to continue to have the right to archakatvam, under Sub-section (3) of Section 34 of the Endowments Act, will not be entitled to emoluments which they used to receive under the 1966 Endowments Act, but would be entitled to in accordance with the scheme to be framed by the Commissioner u/s 144 of the Endowments Act.

13. It is the case of the respondents that hitherto, there was no cadre strength fixed in respect of respondent No. 4-Mutt, and that respondent No. 3-Commissioner of Endowments, has now fixed the cadre strength in respect of respondent No. 4-Mutt at six, in exercise of the power conferred on him under Sub-section (4) of Section 35 of the Endowments Act and has also created a fund, as provided u/s 65-A of the Endowments Act, for payment of salaries and other emoluments of Archakas, and that the Archakas, who qualify to continue to have the right of archakatvam under Sub-section (3) of Section 34, shall be paid emoluments in accordance with the scheme to be framed u/s 144 of the Endowments Act. It is their further case that the Government in G.O. Ms. No. 888, Revenue (Endowments.!), dated 08.12.2000, which among others provided for appointing authority, fixation of cadre strength, qualifications, disqualifications, age of recruitment, age of superannuation, seniority, promotion etc. These Service Rules, the respondents contend were implemented in almost all the institutions, except respondent No. 4-Mutt and two others.

14. By virtue of Sub-section (3) of Section 34 of the Endowments Act, all the qualified members of the Archakas, who continued archakatvam at the time of repealing of 1966 Endowments Act, are not entitled to have the right to archakatvam, and their right to continue as such, is subject to their fulfilling the eligibility criteria and subject to their number not exceeding the cadre strength fixed for respondent No. 4-Temple by respondent No. 3-Commissioner of Endowments in exercise of power conferred on him u/s 35(4) of the Endowments Act. It is with a view to identify such eligible Archakas for continuance as such as per the provisions of Sub-section (3) of Section 34 of the Endowments Act, respondent No. 4-Mutt has issued the impugned notices, calling upon all the Archakas to submit their Bio-Datas, so that they would be appointed in the cadre strength fixed by respondent No. 3-Commissioner of Endowments, for respondent No. 4-Mutt. Therefore, the impugned notice, issued by respondent No. 4-Mutt, cannot be said to be contrary to the provisions of Sub-section (3) of Section 34 of the Endowments Act, not can it be said that by insertion of Sub-section (3) in Section 34 of the Endowments Act, the Government had restored the hereditary rights of Archakas and other Office Holders, which stood abolished by virtue of Section 34(1) of the Endowments Act. If the impugned notice is interfered with by this Court, then it would amount to interfering with identification process of eligible Archakas for appointment in the cadre strength fixed for

respondent No. 4-Mutt, thereby nullifying the provisions of Sub-section (3) of Section 34 of the Endowments Act, the implementation of which, the petitioners are also seeking.

For the foregoing reasons, I find no merit in the writ petition, and the; same is accordingly dismissed. No costs.