

(2007) 11 AP CK 0026

Andhra Pradesh High Court

Case No: Writ Petition No. 15112 of 2007

Rami Setty Siva Sankar Rao

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision: Nov. 29, 2007

Acts Referred:

- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 - Section 137, 15, 154, 16, 17
- Civil Procedure Code, 1908 (CPC) - Section 92

Citation: (2008) 4 ALD 460 : (2008) 1 ALT 300

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: S. Sridhar, for the Appellant; Government Pleader for Respondent Nos. 1 to 5 and T. Srikanth Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

Rami Setty Siva Sankar Rao, the writ petitioner, filed the present writ petition for a Writ of Certiorari calling for records and quash the impugned proceedings in G.O. Ms. No. 83 dated 27.01.2006 issued by the first respondent insofar as exempting Sri Sangameshwaraswamy Temple situated at Sangam Jagarlamudi village, Tenali Mandal, Guntur District, from the operation of provisions of Section 15 and 29 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act No. 30 of 1987) (hereinafter referred to as "the Act" for the purpose of convenience) for a period of three years by declaring the same as arbitrary, illegal and contrary to the provisions of Section 154 of the Act and pass such other suitable orders.

2. The said G.O. Ms. No. 83 dated 27.01.2006 reads as hereunder:

Government of Andhra Pradesh

Abstract

Endowments Department - Guntur District - Rachuru Temples, Rachuru. Bhattiporlu (M) - Exemption from the operation of provisions u/s 15 & 29 of the Act 30/87 - Orders - Issued.

Revenue (Endowments-Iv)

Department

G.O. Ms. No. 83

Dated: 27.

Read the following:

(1) G.O. Rt. No. 1779, revenue (Endts.I) Department, dated 15.11.1994.

(2) From the Commr. of Endts. A.P., Hyderabad, Lr. No. D1/46453/2005, dated 17.11.2005.

(3) Govt. Memo No. 34912/Endts.IV(1)/ 2005-1, dated 02.12.2005.

(4) From the CED., Hyderabad Letter No. D1/46453/2005, dated 27.12.2005.

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ORDER:

In the G.O.1st read above Government have issued orders clubbing the following 8 temples as one group i.e, Rachuru Group temples:

(1) Sri Kasivisweswara Swamy Temple, Appikatla.

(2) Sri Venugopala Swamy Temple, Repalle.

(3) Sri Uma Maheswara Swamy Temple, Repalle.

(4) Sri Venugopala Swamy Temple, Sangamjagarlamudi.

(5) Sri Sangameswara Swamy Temple, Sangamjagarlamudi.

(6) Sri Muktheswara Swamy Temple, Moortheta.

(7) Sri Somasekhara Swamy Temple, Kotipalli, and

(8) Sri Laxminarayana Swamy Temple, Rachuru.

2. The Commissioner of Endowments Department, Hyderabad in his proceedings Rc. No. G2/64717/94, dated 02.01.1997 put the above Group Temples under the management of the 1st grade Executive Officer. Ever since, all the above temples are treated as one group and under the administration of an Executive Officer.

3. Sri Manikya Rao Siddardha Venkata Marandeya Rao, Founder Trustee, Rachuru Group Temples, Rachuru, Bhattiprolu Mandal, Guntur District, in his representation dated 14.11.2005 has requested the Commissioner of Endowments, for exemption of the Rachuru group temples, from the provisions u/s 15 & 29 of the Act 30/87 and authorize him to discharge the duties and functions of an Executive Officer to the said 8 temples of Rachuru by withdrawing the Executive Officer.

4. The Commissioner of Endowments, Hyderabad, in his letter 2nd read above has informed that the Assistant Commissioner of Endowments, Guntur has reported that the management of the above temples is in smooth manner with effective management under the Founder Trusteeship of Sri Manika Rao Siddardha Venkata Markandeya Rao.

5. The Commissioner of Endowments, Hyderabad, in his letter 4th read above has furnished the required particulars in above prescribed three formats for exemption of the institutions from the provisions of Sections 15 and 29 of the Act 30/87 and requested the Government to issue early orders in the matter.

6. Government after careful examination of the proposal of the Commissioner of Endowments, Hyderabad, decided to grant exemption to Rachuru Group Temples, Rachuru, Bhattiprolu (M), Guntur District from the provisions u/s 15 and 29 of the Act 30/1987, for a period of three (3) years from the date of issue of the orders.

7. The following notification shall be published in/the next issue of the Andhra Pradesh Gazette.

Notification

In exercise of the powers conferred u/s 154 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30/87) the Governor of Andhra Pradesh, hereby exempts Rachuru Group Temples, Rachuru, Bhattiprolu Mandal, Guntur District, from one operation of provisions of Sections 15 & 29 of the Act 30/1987 for a period of (3) years from the date of issue of orders.

8. The Commissioner of Endowments, Andhra Pradesh, Hyderabad, shall take necessary further action in the matter.

(By Order and In The Name of The Governor of Andhra Pradesh)

D.C. Rosaiah

Secretary to Government

To

The Commissioner of Endowments, Andhra Pradesh, Hyderabad.

The Commissioner of Printing & Stationery (Printing Wing), Hyderabad.

(With a request to publish in the next issue of the Gazette.)

Copy to:

The Deputy Commissioner of Endowments, Guntur, Guntur District.

The Assistant Commissioner of Endowments, Guntur, Guntur District.

The Founder Trustee, Rachuru Group Temples, Rachuru, Bhattiprolu Mandal, Guntur District.

SF/SCs

//Forwarded By Order//

Section Officer

3. The fourth and fifth respondents filed counter-affidavits. This Court issued rule nisi on 17.07.2007.

4. Sri S.Sridhar, learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and also the respective stands taken in the counter-affidavits. The learned Counsel also had drawn a distinction between the founder of the institution and a member of the family of the founder of the institution. The learned Counsel further had drawn the attention of this Court to Sections 17 and 154 of the Act as well. The learned Counsel also placed reliance on certain decisions.

5. On the contrary, the learned Government Pleader for Endowments had taken this Court through the contents of the counter-affidavit of the fourth respondent and also had taken this Court through Section 154 of the Act and would maintain that in the light of the said specific provision, the powers of the Government in exempting Sri Sangameshwara Swamy Temple from the operation of provisions of Sections 15 and 29 of the Act cannot be doubted. Hence, the writ petition is liable to be dismissed. The learned Government Pleader relied upon certain decisions.

6. Sri T. Srikanth Reddy, learned Counsel representing the fifth respondent had taken this Court through the contents of the counter-affidavit of the fifth respondent and also the Government Order impugned in this writ petition and would maintain that the writ petition itself is not a bonafide one and the same is liable to be dismissed.

Heard both the counsel.

7. It is the case of the writ petitioner that he is in the habit of attending the performance of service or worship, charity connected with the said temple and also has been regular in participating in the festivals and thus, he is a person having interest in the said temple and would fall within the purview of definition of "person interested", as specified in Section 2(18) of the Act. It is averred that the Government of Andhra Pradesh vide G.O. Rt. No. 1779 dated 15.11.1994 has issued orders clubbing the following eight temples i.e,

- (1) Sri Kasivisweswara Swamy Temple, Appikatla.
- (2) Sri Venugopala Swamy Temple, Repalle.
- (3) Sri Uma Maheswara Swamy Temple, Repalle.
- (4) Sri Venugopala Swamy Temple, Sangamjagarlamudi.
- (5) Sri Sangameswara Swamy Temple, Sangamjagarlamudi.
- (6) Sri Muktheswara Swamy Temple, Modrthata.
- (7) Sri Somasekhara Swamy Temple, Kotipalli and
- (8) Sri Laxminarayana Swamy Temple, Rachuru.

as one group i.e, Rachuru Group Temples. The 2nd respondent, vide his proceedings in R.C. No. G2/64717/94 dated 02.01.1995, put the Group temples under the management of the First Grade Executive Officer in the interests of public service and for better administration of institutions. Ever since, all the above temples are treated as one group and under the administration of an Executive Officer with headquarters at Rachur, Guntur district.

8. While so, the fifth respondent herein, has made an application to the fourth respondent on 27.08.1996 requesting him to declare him as hereditary trustee of Rachur Group Temples in Guntur District, as he is a member from founder family, and to recognize him as Founder Trustee to the Group Temples. The fourth respondent, vide his proceedings R.C. No. A4/9154/96, ADM EDW dated 14.09.1996, has passed orders confirming the fifth respondent as hereditary trustee of the group and also as member from founder family and recognized him as the founder trustee of the group temples, without conducting any enquiry, whatsoever, and issued the above proceedings in nineteen days. Pursuant to the proceedings dated 14.09.1996 of the fourth respondent, the fifth respondent is managing the said group of temples.

9. It is averred that thereafter an application was made by the interested villagers/persons before the third respondent stating that the fourth respondent herein, without conducting any enquiry and without verifying genealogy of the founder family, has passed the above proceedings, which is not in the interest of the temples. By proceedings RC A2/8677/96, dated 10.11.1999, the third respondent constituted a non-hereditary trust board to one of the group of temples i.e, Sri Sangameswara Swamy Temple, Sangam Jagarlamudi village, as he received complaints from the people that the fifth respondent is mismanaging the affairs and of the temples. Challenging the said proceedings of the third respondent, one Mr. T. Prabhakar Reddy filed W.P. No. 31638/ 1998 before this court. The said writ petition was disposed of with a direction to the petitioner therein to prefer an appeal within 15 days from the date of order i.e., 13.09.1999. The said Prabhakar Reddy did not prefer any appeal. Hence, oath of office and secrecy was administered to the

non-hereditary trust members on 18.11.1999.

10. It is also averred that later the fifth respondent preferred an appeal against the said proceedings of the third respondent appointing non-hereditary trust board to Sri Sangameswara Swamy temple before the second respondent, who called for the records from Endowments Department, Guntur. The third respondent submitted the remarks along with connected records to the second respondent. The second respondent, after going through entire material on record, dismissed the appeal by proceedings DDS No. C1/58588/99, dated 29.04.2000. Against the said orders of the second respondent, the fifth respondent filed revision petition before the first respondent with a request to stay the orders of the third respondent and the oath and secrecy of the trustees designated to Sangameshwara Swami Devasthanam, Sangam jagarlamudi village until further orders. The first respondent initially granted stay and the second respondent was directed to furnish his remarks along with connected records. The second and third respondents submitted their remarks along with connected records and reported that the request of the fifth respondent is contrary to the Act, and as such the request of the fifth respondent cannot be accepted. The first respondent, after carefully examining the records and the report submitted by the second and third respondents, rejected the revision petition filed by the fifth respondent by proceedings Memo No. 79735 by Endt. IV (1)99, dated 16.11.2000.

11. It is further stated that in the year 2003 the second respondent constituted a Board of Trustees to one of the group temples, namely, Sangameshwara Swami Devasthanam, Sangam jagarlamudi village of Tenali Mandal, Guntur District, for a period of two years with the fifth respondent as the chairman of the Trust Board and ever since, the said temple was being managed by the said Trust committee. Soon after the expiry of the said period, the second respondent herein by proceedings No. B2/4189/05 dated 02.02.2006 constituted a Board of Trustees to the said temple for a further period of two years and the Inspector, Endowments, Tenali, was authorized to administer the oath of office and secrecy to the persons appointed as Trustees on 18.02.2006 at 11.00 A.M.

12. It is also stated that on the date of administering the oath of office and secrecy, the said Board Members came to know through the fourth respondent herein that the first respondent issued a Government Order, bearing No. 83 dated 27.01.2006, exempting Rachuru group of Temples, Rachuru, Bhattiprolu Mandal, Guntur District, from the operation of provisions of the Sections 15 and 29 of the Act for a period of three years from the date of the issue of the order. Then on enquiry, the petitioner came to know that the fifth respondent herein made a representation dated 14.11.2005 to the second respondent herein for exemption of the group of temples from the provisions under Sections 15 and 29 of the Act and to authorize him to discharge the duties and functions of an Executive Officer, for the said eight temples of Rachuru by withdrawing the Executive Officer. It appears that the second

respondent, to whom the fifth respondent herein made representation, surprisingly without taking into consideration the previous events and without making any enquiry, whatsoever, forwarded the representation along with the covering letter that the management of the above temple is in smooth manner and with effective management under the founder Trusteeship of the fifth respondent herein, which is contrary to the earlier proceedings issued by the then Secretary, Endowments Department, rejecting the similar application filed by the fifth respondent.

13. It is further stated that challenging the impugned Government Order, one Seshagiri Rao filed a writ petition before this Court but since he could not brief his counsel with proper facts, the same came to be dismissed as withdrawn. Thereafter, one B.Srinivas Rao filed W.P. No. 3996 of 2007 questioning the same impugned Government Order. The said writ petition was dismissed by this Court on the ground that the petitioner therein was not having locus standi.

14. Further, specific stand had been taken that both the above writ petitions were filed challenging the impugned Government Order in granting exemption in respect of the group temples, whereas the present writ petition is filed challenging the impugned Government Order insofar as granting exemption in respect of Sri Sangameshwara Swami Temple situated at Sangamjagarlamudi village, Tenali Mandal, Guntur District only. Certain further averments were made in the specific grounds raised in the writ petition and also in paras 12 and 13 of the affidavit filed in support of the writ petition.

15. In the counter-affidavit filed by the fourth respondent, several averments made in the affidavit filed in support of the writ petition had been specifically denied. It is stated that the Government of Andhra Pradesh issued G.O. Rt. No. 1779 dated 15.11.1994 creating new group of temples with headquarters at Rachuru, basing on the report of the Commissioner, Endowments Department, A.P., Hyderabad, vide G2/64717/ 91, dated 13.07.1994 with the following temples.

- (1) Sri Laxminarayana Swamy Temple, Rachuru.
- (2) Sri Uma Maheswara Swamy Temple, Repalle.
- (3) Sri Venugopala Swamy Temple, Repalle.
- (4) Sri Sangameswara Swamy Temple, Sangamjagarlamudi.
- (5) Sri Venugopala Swamy Temple, Sangamjagarlamudi.
- (6) Sri Kasivisweswara Swamy Temple, Appikatla
- (7) Sri Muktheswara Swamy Temple, Murthota.
- (8) Sri Someswara Swamy Temple, Kotipalli

In pursuance of the said Government Orders, the Commissioner, Endowments Department, A.P., Hyderabad, appointed Sri G.Sai Babu, first Grade Executive

Officer, Group Temples, Kotipalli to the above said Rachuru Group, as per the proceedings in Rc. No. G2/64717/ 91, dated 02.01.1995. Accordingly, all the said group temples were brought under the administration of the single Executive Officer. Thereafter, when the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, in his proceedings No. G2/50039/ 96, dated 09.10.1996, separated the two temples i.e, Sri Sangameswara Swamy Temple, Sangam Jagarlamudi and Sri Venugopala Swamy Temple, Sangam Jagarlamudi, the Government issued a memo No. 4500/Endts.I/95 dated 23.11.1996, wherein it was decided by the Government that those two temples should not be separated from Rachuru Group Temples and all the eight temples should be treated as one Group of temples and the Executive Officer appointed for those two temples be transferred elsewhere and all the eight temples be kept under the charge of E.O., of Rachuru Group Temples.

16. It is further averred that on the application of the fifth respondent herein, the Assistant Commissioner, Endowments Department, Guntur issued proceedings in his Rc. No. A4/9154/96 dated 14.09.1996, recognizing the fifth respondent herein as member belonging to founder family for the above mentioned Rachuru Group Temples and accordingly, he had been acting as such.

17. It is also averred that the Government of Andhra Pradesh, in its G.O. Rt. No. 1674, dated 26.10.1998, appointed a specified authority u/s 137 of the Act, in which the fifth respondent was appointed as Chairman along with two other members in order to exercise all powers and perform all functions of Board of Trustees till the new Board of Trustees is constituted or for a period of one year which is earlier.

18. It is also stated that the fourth respondent constituted trust board vide proceedings in Rc. No. A2/8677/96 dated 10.11.1998 to Sri Sangameswara Swamy Temple, Sanga Jagarlamudi for a period of one year. Accordingly, the trustees administered oath of office and secrecy and functioned for the said period. This Court, by order dated 13.11.1998 in W.P.M.P. No. 38796 of 1998 in W.P. No. 31638 of 1998 filed by K. Prabhakara Reddy, suspended the operation of the Trust Board appointment orders dated 10.11.1998, pending further orders. The fifth respondent herein preferred a revision against the appointment of trust board before the second respondent, but on due hearing the said revision petition was dismissed as per the orders dated 29.04.2000 in D. Dis. No. C1/58588/99. Against the said orders, the fifth respondent preferred a further revision to the Government, but the same was also dismissed in Memo No. 79735/ Endts. IV(1)/99, dated 16.11.2000.

19. It is further stated that thereafter another trust board was constituted for a period of two years in the year 2003 and the fifth respondent acted as Chairman of the Trust Board. Thereafter, the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, constituted a trust board vide proceedings No. B2/4189/05, dated 02.02.2006 for a period of two years and the trust board is now functioning with the fifth respondent as Chairman of the trust board. In the meanwhile, the

Government issued G.O. Ms. No. 83, Revenue (Endowments-IV) Department, dated 27.01.2006, exempting the Rachuru Group Temples, Rachuru, from the operation of the provisions of Sections 15 and 29 of the Act for a period of three years from the date of orders. Hence, it is stated that there is no illegality in the said orders and the Government after careful examination of the proposal of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, decided to grant exemption.

20. It is also averred that the fourth respondent, vide proceedings dated 14.09.1996 in R.C. No. A4/9154/96 recognized the fifth respondent as a member of founder family. Thereafter, he was appointed as one of members of the trust board constituted from time to time and had been functioning as Chairman, as per the verdict of the Hon'ble Supreme Court of India, as per the privilege as a member belonging to founder family. There is no petition pending for declaration of the fifth respondent as a founder trustee, except a petition in O.A. No. 42 of 2003, filed by Kotha Satanaarayana to declare him as a member belonging to founder family of Sri Sangameswara Swamy Temple, Sangam Jagarlamudi, and the same is pending. The fifth respondent is also a party to the said O.A.

21. Specific stand had been taken that it is false to mention that each temple is 80 kms away from another and the administration of the temples will suffer heavily. The revision petition dismissed by the first respondent is only pertaining to appointment of trust board and not pertaining to the declaration of the fifth respondent as founder trustee of the group temples as alleged in the affidavit of the petitioner.

22. It is also averred that there is no illegality in granting exemption from the application of the provisions of Sections 15 and 29 of the Act of Rachuru Group Temples through the G.O. Ms. No. 83 dated 27.01.2006 and the same had been done by virtue of Section 154 of the Act. Hence, dismissal of the writ petition had been prayed for.

23. In the counter-affidavit filed by M.S.V.M. Rao, the member of founder's family, Rachuru Group Temples, several averments had been denied. It is averred in para 3 of the counter-affidavit that the great grandfather of the fifth respondent was the zamindar of Rachur and he had founded and established eight temples which are described herein below in the erstwhile estate known as "Rachur Zamindari", as the case may be. The description of the said eight temples is as follows:

(1) Sri Laxminarayana Swamy Temple, Rachuru.

(2) Sri Uma Maheswara Swamy Temple, Repalle, Guntur District.

(3) Sri Venugopala Swamy Temple, Repalle, Guntur District.

(4) Sri Sangameswara Swamy Temple, Sangamjagarlamudi, Guntur District.

(5) Sri Venugopala Swamy Temple, Sangamjagarlamudi, Guntur District.

(6) Sri Kasivisweswara Swamy Temple, Appikatla, Guntur District.

(7) Sri Muktheswara Swamy Temple, Moorthata, and

(8) Sri Somasekhara Swamy Temple, Kotipalli.

24. Further it is averred that all these eight temples were formed and established only as one group of temples by fifth respondent's predecessors in title and interest, that is to say, his great grandfathers who were the zamindars of the said Rachur zamindari. They have one and only the origin in their foundation and establishment i.e, the zamindari of Rachur. They all constitute only one group of temples having common administration administered by the same zamindari and endowed with properties, both land and otherwise, to maintain all the said temples as a group. In fact, the administration of the said group of temples was also subject matter of two scheme suits over a period of last 100 years under which all the said temples were declared and treated as one group of temples with only one Board of Management that was headed by the predecessors of the fifth respondent in title as zamindars. The first scheme suit was O.S. No. 50 of 1985 (sic. 1885) in the court of the District Judge at Machilipatnam, the decree in which was implemented and recognized all through and ultimately by the then Madras Hindu Religious Endowments Board u/s 63 of Madras Act, 2 of 1927. This was followed by another and a similar scheme suit u/s 92 of the CPC viz., O.S. No. 25 of 1928 in the Court of the District Judge at Guntur, the decree where from was also implemented by the same Madras Hindu Religious (Endowments) Act. It is therefore, obvious that the said group of eight temples constitute and form part of one and the same endowment under a common board of trustees headed by the great grandfathers of the fifth respondent and their successors-in-title and interest and now by the fifth respondent as the ultimate successor in interest and title.

25. It is further averred that the fifth respondent had been recognized as the heir and representative of founder trustee family as provided u/s 17 of the Act, wherein the hereditary claims of only the heirs of founder trustees are recognized and all other hereditary claims of all other officers or servants have been done away with. While so, one Kotha Satyanarayana Rao claiming to be a G.P.A. holder of Paripalanakarthha had created several frivolous litigations to take away the management of the temple from the fifth respondent on one or other reason and one of such attempts is filing the present writ petition.

26. Further, specific stand had been taken that G.O. Ms. No. 83 dated 27.01.2006 was issued by the first respondent after getting reports from the fourth respondent that the management of all the temples is being run in a smooth manner under the trusteeship of the fifth respondent.

27. It is also further averred that from the said date i.e, 27.01.2006, the fifth respondent has been discharging his duties as Managing Trustee and Founder Family Member, without any allegations from any quarter and even in the writ petition no allegations are made against the fifth respondent of any mismanagement. It is stated that the only ground urged by the petitioner is that he is a resident of the village and he is eligible for appointment as a member of the trust board and that he lost his valuable right of being a trustee by the impugned Government Order, and this Court already held that the administration of a temple cannot be required to be in a manner that suits the whims and fancies of an individual, but in the interests of the temple.

28. Showing of surplus income and deposits in FDs also had been averred. Further, specific stand had been taken that similar writ petitions had been filed challenging the self-same Government Order, that those writ petitions were dismissed, and hence the said orders operate as constructive res judicata. Further, the distance factor also had been explained in para 10 of the counter-affidavit of the fifth respondent.

These are the respective stands taken by the parties.

29. The fact that certain prior writ petitions were filed challenging the self-same Government Order and they were dismissed, is not in serious controversy. However, the writ petitioner makes an attempt to explain by saying that a limited prayer is prayed for in the present writ petition. The proceedings of the fourth respondent dated 14.09.1996, proceedings of the third respondent dated 10.11.1999, 02.01.1995, 29.04.2003 and 02.02.2006 and the proceedings of the first respondent dated 16.11.2000 had been placed before this Court apart from the impugned G.O. Ms. No. 83 dated 27.01.2006, already specified supra. The contents of the said proceedings may not be very relevant for the purpose of deciding the question in controversy. It is the stand taken by the writ petitioner that each and every resident of the village is eligible for appointment as a member of the Trust Board, and since such valuable rights are affected by virtue of the impugned proceedings the writ petitioner can challenge the same.

30. Section 15 of the Act deals with appointment of board (sic), which reads as under:

15. Appointment of Board of Trustees:- (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 ten lakhs, the Government shall constitute a Board of Trustees consisting of nine persons appointed by him;

(b) Whose annual income does not exceed rupees ten lakhs, the Commissioner shall constitute a Board of Trustees consisting of five persons appointed by him.

(2) In respect of a charitable or religious institution or endowment included in the list published under Clause (b) of Section 6, the Deputy Commissioner having jurisdiction shall constitute a Board of Trustees consisting of five persons appointed by him.

(3) In the case of any charitable or religious institution or endowment included in the list published under Clause (c) of Section 6, the Assistant Commissioner having jurisdiction shall constitute a Board of Trustees consisting of three persons appointed by him;

Provided that the Assistant Commissioner may either in the interest of the institution or endowment or any other sufficient cause or for reasons to be recorded in writing appoint a single trustee instead of a Board of Trustees.

31. Section 17 of the Act deals with the procedure for making appointments of trustees and their term, which reads as under:

17. Procedure for making appointments of trustees and their term: (1) In making the appointment of trustees u/s 15, the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall have due regard to the religious denomination or any such section thereof to which the institution belongs or the endowment is made and the wishes of the founder:

Provided that the founder or one of the members of the family of the founder, if qualified as prescribed shall be appointed as one of the trustees.

Explanation I : "Founder" means a person who has founded an Institution or Endowment and recognized as such by the authority competent to appoint Trustees u/s 15.

Explanation II:- "Member of the family of the founder" means children, grand children and so in agnatic line of succession for the time being in force and declared or recognized as such by the relevant appointing authority.

Explanation III:- Those persons who founded temples by collecting donations partly or fully from the public as well as those who founded them on public lands shall not be recognized as founder trustees by any means.

(2) Every trustee appointed u/s 15 shall hold office for a term of two years from the date of taking oath of office and secrecy.

Provided that every trustee who completed a term of office of one year at the commencement of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Act, 2000, shall cease to hold office forthwith and every Trustee whose term of office exists after such commencement shall continue to hold office for a period of two years from the date of taking oath of office and secrecy.

Explanation: Where the oath of office and secrecy are administered on different dates, the period of three years shall be reckoned from the earlier of those dates for the purpose of this sub-section.

(3) The procedure for calling for application for appointment of trustees, verification of antecedents and other matters shall be such as may be prescribed.

(4) No person shall be a trustee in more than one Board of Trustees.

(5) In every Board of Trustees, there shall be atleast one woman member and one member belonging to the Scheduled Castes or the Scheduled Tribes whose population is larger in the concerned village and one member belonging to Backward classes:

Provided that it shall not be necessary to appoint:

(a) a woman member where any person appointed to represent the Scheduled Castes or the Scheduled Tribes or the Backward Classes is a woman;

(b) a member of the Scheduled castes or the Scheduled Tribes where any such woman member appointed belongs to the Scheduled Castes or the Scheduled Tribes;

(c) a member of the Backward Classes where any woman member appointed belongs to the Backward Classes.

(6) All properties belonging to a charitable or religious institution or endowment, which on the date of commencement of this Act, are in the possession or under the superintendence of the Government, Zilla Praja Parishad, Municipality or other local authority or any company, society, organization, institution or other person or any committee, superintendent or manager appointed by the Government, shall, on the date on which a Board of Trustees is or is deemed to have been constituted or trustee is deemed to have been appointed under this section, stand transferred to such Board of Trustees or trustee thereof, as the case may be, and all assets vesting in the Government, local authority or person aforesaid and all liabilities subsisting against such Government, local authority or person on the said date shall, devolve on the institution or endowment, as the case may be.

32. Section 29 of the Act deals with appointment and duties of Executive Officer, which reads as hereunder:

29. Appointment and duties of Executive Officer:- (1) The Government may constitute not more than three charitable or religious institutions or endowments each of whose annual income in rupees fifty thousand but does not exceed rupees one lakh into such groups as may be prescribed.

(2) For each such group of charitable or religious institutions or endowments there shall be appointed an Executive Officer for exercising the powers and discharging

the duties conferred on him by or under this Act.

(3) The Government may for purpose of this Act, constitute such grade of Executive Officers, prescribing their appointing authorities and authorize them to exercise such powers and discharge such duties as may be prescribed.

Provided that twenty percent of vacancies in each grade of Executive Officers shall be filled by the employees belonging to the institutions or Endowments of prescribed grade.

Provided further that, it shall be competent for the Government to appoint a Regional Joint Commissioner, a Deputy Commissioner or an Assistant Commissioner as an Executive Officer.

(4) The Executive Officer appointed and exercising the powers and discharging the duties shall be a person professing Hindu religion and shall cease to exercise those powers and discharge those duties when he ceased to profess that religion.

(5)(a) The Executive Officer appointed under this section shall be under the administrative control of the trustee of the institution or endowment and shall be responsible for carrying out all lawful directions issued by such trustee, from time to time;

(b) The Executive Officer shall, subject to such restrictions as may be imposed by the Government,-

(i) be responsible for the proper maintenance and custody of all the records, accounts and other documents and all the jewels, valuables, moneys, funds and other properties of the institution or endowment;

(ii) arrange for the proper collection of income and for incurring of expenditure;

(iii) sue or be sued by the name of the institution or endowment in all legal proceedings:

Provided that any legal proceeding pending immediately before the commencement of this Act, by or against an institution or endowment in which any person other than an Executive Officer is suing or being sued shall not be affected;

(iv) deposit all moneys received by the institution or endowment in such bank or treasury as may be prescribed and be entitled to sign all orders or cheques against such moneys:

Provided that such deposit may be made in treasury if the rate of interest offered by it is higher than that of any bank.

(v) have power in cases of emergency, to direct the execution of any work or the doing of any act which is provided for in the budget for the year or the immediate execution or the doing of which is in his opinion, necessary for the preservation of

properties of the institution or endowment or for the service or safety of the pilgrims resorting thereto and to direct that the expenses of executing such work or the doing of such act shall be paid from the funds of the institution or endowment:

Provided that the Executive Officer shall report forthwith to the trustee any action taken by him under this sub-clause and the reasons therefor.

(c) The Executive Officer shall, with the prior approval of the trustee, institute any legal proceedings in the name of the institution or endowment or defend any such legal proceedings;

(d) Where there is no Executive Officer in respect of any Charitable or Religious Institution or Endowment the trustee or the Chairman of the Board of Trustees or any employee of any Institution or Endowment duly authorized by the Commissioner in this behalf shall exercise the powers, perform the functions and discharge the duties of an Executive Officer.

(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.

33. Section 154 of the Act deals with exemptions, which reads as under:

154. Exemptions:- The Government may by notification, exempt from the operation of any of the provisions of this Act or any of the rules made thereunder:

(a) any charitable institution or endowment the administration of which was or is for the time being vested-

(i) in the Government either directly or through a Committee or Treasurer of Endowments, appointed for the purpose;

(ii) in the official Trustee or in the Administrator General;

(b) any charitable institution or endowment founded for educational purpose or for providing medical relief; or

(c) any institution or endowment which is being well managed by the founder; or

(d) any institution or endowment;

and may likewise vary or cancel such exemption.

34. Section 154(c) of the Act specifies that the Government may, by notification, exempt from the operation of any of the provisions of the Act or any of the rules made thereunder, any institution or endowment which is being well managed by the founder. The stand taken by the writ petitioner is that the original founder

should be alive to claim exemption and the status of the founder cannot be conferred on the fifth respondent, since at the best the fifth respondent may be a member of the founder family and definitely not the founder. Even under the proceedings, the fifth respondent was declared as hereditary trustee or joined as founder family member and definitely not as founder. Hence, such person would not fall within the meaning of Section 154(c) of the Act.

35. Strong reliance was placed on [S.V. Sudhakara Rao Vs. State of A.P. and Another](#), , wherein, at paras 12,13,14 and 17, the learned Judge observed as under:

12. The Act was preceded by an elaborate study by Justice Challa Kondaiah Commission which categorically recommended for abolition of Hereditary Trusteeship and appointment of Board of Trustees with non-hereditary trustees. This was done with a view to release the religious institution from the clutches of hereditary trustees who converted the holy places into their fiefdom and resorted to satanic deeds. The power vested in the Government u/s 154 must be exercised keeping in view this object, notwithstanding that a religious institution is being managed well. Further Section 154(c) refers to a religious institution which is being well managed by the founders. It does not enable a member of the founders' family to seek exemption under the said provision. In my considered opinion, the term "founders" used in Section 154(c) does not include a member or members of founders' family.

13. The learned Counsel for petitioner also invited attention of this court to the decision of the Supreme Court in [Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another](#), . In the said case, the Supreme Court inter alia upheld the constitutional validity of Section 16 (abolition of hereditary trusteeship) and observed that hardship caused to the hereditary trustees who are supposed to evince greater and keener interest in the temple, can be mitigated by appointing a member of the founders' family to the Board of Trustees and making him Chairman. The learned Counsel contends that as the Supreme Court recognized the importance of founders, the temple should be exempted from the provisions of Section 15 of the Act. I fail to understand as to how the observations made by the Supreme Court in Bansilal Patil's case (supra) can be understood, the way the learned Counsel suggests. Merely because a member of founders' family can be appointed as a member of Board of Trustees, the same would not confer any right on such person to seek exemption from Section 15 of the Act. The Supreme Court only observed that a member of founders' family should be appointed to Board of Trustees, but never suggested to exclude those temples from the purview of the Act, though in the subsequent decision in [A.S. Narayana Deekshitulu etc. Vs. State of Andhra Pradesh and others](#), , the Supreme Court suggested that where the income of Temples classified under Sub-section (c) falls below certain amount, they may be exempted from the provisions of the Act.

14. The learned Counsel for petitioner relied on the Division Bench judgment of this Court in *Hitakarini Samaj* (1 supra) in support of the contention that the State is expected to exercise its power u/s 154 in tune with the objects of the case. The Division Bench observed as under:

The Commissioner of Endowments, who is a statutory functionary operating under the Legislative Dicta of the provisions of the Act 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 charitable institution. No promise of the Government could subvert this Legislative position nor disable the Commissioner of Endowments nor even the Government itself from performing its legitimate role in obedience to the commands of the Legislation. The gross mismanagement of the affairs of the institution by the private management is amply recorded and to grant exemption from the provisions of the Act and restore the management of the public charitable institutions into such hands would be a gross subversion of public policy and of public interest.

17. Admittedly, Sri Venkateswara Swamy Temple, Dwarka Tirumala, West Godavari district is the important Temple in Andhra Pradesh after Tirumala Tirupathi Devasthanam, dedicated to Lord Sri Venkateswara Swamy. Millions of pilgrims and devotees visit the Temple every year. Public interest lies in entrusting to a Board of Trustees and to an Executive Officer of the Department of Endowments than totally entrusting it to the members of founders' family. Even if the Commissioner recommended for exemption, as alleged, as the Government is repository of exemption power, nothing prevents the Government to overrule the recommendations of Commissioner and reject the request for exemption. The impugned order is unassailable especially in view of the fact that petitioner has no right, much less enforceable right to seek exemption u/s 154 of the Act.

36. Further, strong reliance was placed in *D. Pulla Rao v. Government of A.P.* 2004 (7) ALT 876, wherein it was held at paras 10,12 and 13 as under:

10. It may be true that Section 15, which provides for constitution of Trust Board and Section 29, which provides for appointment of Executive Officer are important for the administration of the Temples and other Religious Institutions. But, in a set of circumstances, if the Government chooses to exempt the administration of the Temple/Institution from the said provisions, no exception can be taken, as long as the exercise of the power was reasonable.

12. Learned Counsel for the petitioner submits that in *Executive Officer, Group of Temples* case (1 supra) and *Hitakarini Samaj's* case (2 supra), this Court held that power u/s 154 cannot be exercised to grant exemption from the purview of Sections 15 and 29 of the Act. A perusal of these judgments discloses that in none of these two judgments, it was held that the power to grant exemption is not available

vis-avis the provisions of Sections 15 and 29 of the Act. In the first case (1 supra), the rights of hereditary trustees were dealt with in the other case the subject matter related to cancellation of an exemption granted by the Government. In a way that judgment approved the power of the Government, both as regards grant of exemption from the provisions of Sections 15 and 29 of the Act and withdrawal of exemption. Apart from not being of any help to the petitioner, this judgment helps this court in repelling the contention of the petitioner. This court cannot inquire into whether there existed the circumstances warranting exercise of discretion by the Government.

13. As is common in any other case of exercise of discretion, in the matter of grant of exemption u/s 154 of the Act also, it is required to be exercised reasonably. To establish that the power of exemption was exercised unreasonably, necessary facts have to be pleaded and established. The only ground pleaded by the petitioner in this regard is that there were certain allegations of mismanagement. In their respective counter affidavits, the respondents have categorically stated that the enquiries revealed that the administration by the Committee was proper and legal.

37. On a careful reading of the impugned order, this Court is satisfied that the discretion exercised while granting exemption cannot be said to be either arbitrary or illegal or without jurisdiction. Even otherwise, when certain persons similarly placed just like the writ petitioner, having been unsuccessful in challenging the self-same G.O., the writ petitioner cannot be permitted to question the same on the ground that the writ petitioner is challenging only a portion of the G.O. The impugned G.O., in toto had been challenged. Hence, viewed from any angle, the writ petition is not a bona fide one, and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. There shall be no order as to costs.