

(2001) 10 AP CK 0057

Andhra Pradesh High Court

Case No: Writ Petition No's. 15270, 15393 and 17058 of 2001

K.V. Rama Sastry and Others

APPELLANT

Vs

Got. of A.P., Legislative Affairs
and Justice, Law Dept. and
Others

RESPONDENT

Date of Decision: Oct. 8, 2001

Acts Referred:

- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Act, 2001 - Section 29(5)
- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 - Section 27, 27(1), 27(2)
- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 - Section 2(13), 2(22), 29, 29(1), 29(3)
- Constitution of India, 1950 - Article 14, 16, 25, 26

Citation: (2002) 1 ALT 32

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: P.V.S.S.S. Rama Rao and K.R. Prabhakar and S. Ramachandra Rao, for D. Suresh Kumar, for the Appellant; Govt. Pleader for Endowments, for the Respondent

Final Decision: Dismissed

Judgement

S.B. Sinha, C.J.

Vires of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Act, 2001 (Act 14 of 2001) is in question in these writ petitions.

SUBMISSIONS:

2. It is contended that an unguided and unbridled power had been conferred upon the concerned authorities. The learned Counsel for the petitioners would contend

that "employee" having not been defined, any person of the choice of the authority concerned can be appointed.

FINDINGS:

3. The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 was enacted to consolidate and amend the law relating to administration and governance of charitable and Hindu Religious Institutions and Endowments in the State of Andhra Pradesh.

4. "Executive officer" is defined in Section 2(13) and "religious endowments" in Section 2 (22). Section 29 of the Act deals with matters relating to appointment and duties of executive officer. By reason of the said provision the State has been empowered to constitute the charitable or religious institutions or endowments into groups. Sub-section (1) of Section 29 reads thus:

The Government may constitute not more than three charitable or religious institutions or endowments each of whose annual income is rupees fifty thousand but does not exceed rupees one lakh into such groups as may be prescribed.

5. An executive officer can be appointed for one group of charitable or religious institutions. Sub-sections (3), (4), (5) and (6) of Section 29 which are relevant for the purpose of this case read thus:

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

XXX XXX XXX

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 of 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 the 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 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 authorised 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.

6. It is in the aforementioned background the provisions of Section 29 (5) (d) are required to be considered. It is not in dispute that salaries of several employees including Archakas, etc., are to be borne by the State. It is also not in dispute that whenever a person is appointed as an executive officer he becomes an officer of the State and his salary is to be borne by the State. Validity of Chapter IV of the said Act

on the anvil of Articles 25 and 26 of the Constitution came up for consideration. The apex Court in [A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others](#), upheld the validity of the impugned provisions. The apex Court, however, gave a direction to the State to constitute a committee with named officers to determine the payment of salaries to the holders of the office on hereditary basis prior to the abolition thereof. The committee submitted a report as regards rationalisation of the pay scale and payment of honorarium to the Archakas and other religious staff.

7. The recommendations of the committee were approved by the State as also by the Supreme Court.

8. The power to appoint an employee as an executive officer has to be viewed from the context that a charitable endowment or a group of them may not be in a position to generate enough income to bear such expenses. With a view to avoid unnecessary expenditure such a provision has been made. The question as to whether an unguided and unbridled and naked power has been conferred upon the authorities concerned must be considered from the view point that when a power has been conferred on a higher authority, the same would not be misused. Such a power must be exercised with due application of mind.

9. Furthermore, having regard to the nature of the duties to be performed by the executive officer, the same can be conferred on an employee who is capable therefor. It is, therefore, not correct to contend that even a class IV employee can be appointed for the said purpose. Trustees and employees do not stand on an equal footing. Such a distinction is also required to be borne in mind by the concerned authority.

10. The provision is a beneficial one and as noticed hereinbefore is mainly aimed to prevent draining out of fund of the small institutions. The question as to whether a statute is ultra vires Articles 14 and 16 must be considered in the light of the contextual provisions contained in the Act. If guidelines can be found out from the Act itself, the same would not be declared ultra vires.

11. Sub-section (3) of Section 29 provides for constitution of grades of executive officers. By reason of the rule making power the powers and duties are prescribed. Thus, the concerned employees must be in a position to discharge such functions. This also provides a guideline. Such executive officer would be under the administrative control of the trustee of the institution and he must act in terms of the lawful directions issued by such trustee. His responsibility is fixed in terms of Clause (b) of Sub-section (5) of Section 29. He is required to submit a report as regards any action taken by him to the trustee in terms of the aforementioned provision.

12. In any event, any appointment of the executive officer by the competent authority without application of mind can be a subject matter of judicial review. If an action of an authority under the statute can be a subject matter of judicial review,

normally such a provision would not be declared ultra vires. In [Pavani Sridhara Rao Vs. Govt. of A.P. and Others](#), it has been held:

In this view of the matter, the conclusion is inevitable that the impugned order was passed without application of mind there being no factual basis for invoking the jurisdiction of the competent authority u/s 27 of the 1966 Act under which the impugned order came to be passed on 30-5-1978. It is true that at the relevant time the annual income of the temple was not less than Rs. 10,000/- and did not exceed Rs. 2 lakhs. It is also true that as per Sub-section 2(a) of Section 27 of the 1966 Act, it was provided that in case of any charitable or religious institution or endowment, whose annual income was not less than Rs. 10,000/- but did not exceed Rs. 2 lakhs, the Commissioner could appoint an Executive Officer for discharging the duties of such institution or endowment for exercising the powers and discharging the duties conferred on him by or under that Act. However, that power had to be exercised on relevant data and on necessary facts and material. It could not be exercised just off hand without there being any necessity for appointing an Executive Officer for the temple in public interest. Nothing could be pointed out from the record of this case by the learned Counsel for the respondents as to why it was in the interest of public and for better management of the institution, that an Executive Officer was to be appointed in 1978. Only on this short ground these appeals are required to be allowed.

13. For the reasons aforementioned, we are of the opinion that Section 29 (5) (d) as amended by Act 14 of 2001 is not ultra vires. There is no merit in these writ petitions which are accordingly dismissed. There shall be no order as to costs.