

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P.No.22289 of 2020

Between:

K. Appanna, S/o. Ramulu,
R/o. H.No.4-59, Moturu, Krishna
Andhra Pradesh-521323.

... **Petitioner**

AND

- \$ 1. The State of Andhra Pradesh, rep. by Special Chief Secretary,
Revenue (Endowments) Department, Secretariat, Velagapudi,
Amaravathi, Guntur District.
2. The Commissioner, Endowments Department, Gollapudi, Vijayawada
Krishna District.
3. The Assistant Commissioner, Endowments Department, Vijayawada
Krishna District.
4. Sri S.N.C. Sampath Ayyangar, S/o. Late S.N.C. Singaracharyulu
Ayyangar, Founder Family Member of Sri Seetharama Swamy Temple,
Moturu Village, Gudivada Mandal, Krishna District, R/o. Moturu
Village, Gudivada Mandal, Krishna District.
5. Association of Founders of the Hindu Religious and Charitable
Institutions of Andhra Pradesh (Regd.No.150/2015), having its office
at Door No.14-18, Mylavaram House, Mylavaram-521230, Krishna
District, rep. by its Propagation Committee Member, Sri H.D.
Nageswara Rao.

... **Respondents**

Date of Judgment pronounced on : 14-09-2021

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

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| 1. Whether Reporters of Local newspapers
May be allowed to see the judgments? | : Yes/No |
| 2. Whether the copies of judgment may be marked
to Law Reporters/Journals: | : Yes/No |
| 3. Whether the Lordship wishes to see the fair copy
Of the Judgment? | : Yes/No |

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... Respondents

! Counsel for petitioners : Sri D.V. Sasidhar

^Counsel for Respondents 1 & 2 : G.P. for Endowments

^Counsel for Respondent No.4 : Sri K. Ramanuja Chary

^Counsel for Respondent No.5 : Sri V. Venugopala Rao

<GIST:

>HEAD NOTE:

? Cases referred:

1. (2007) 5 ALD 661=(2007) 4 ALT 509

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**W.P.No.22289 of 2020****ORDER:**

The 2nd respondent issued a notification, dated 23.09.2019, under the A.P. Charitable and Hindu Religious Institutions and Endowments Appointment of Trustees Rules, 1987 (for short 'the Trustees Rules') inviting applications, from interested persons, for appointment as Trustees of Sri Seetharama Swamy Temple, Moturu Village, Gudivada Mandal, Krishna District (hereinafter referred to as the Temple). The petitioner states that he had submitted his application, along with others, for being appointed as a trustee. By proceedings in Rc.No.B2/COE-12026(31)/21/2020-B SEC-ENDOWMENTS, dated 09.11.2020 the 2nd respondent had constituted a Trust Board consisting of 7 members including the petitioner herein and respondent No.4, who was appointed as the Chairman of the Trust Board, as he was a recognised founder family member.

2. The petitioner, being aggrieved by the appointment of the 4th respondent who is a founder family member of the Temple, as Trustee and Chairman of the Trust Board of the Temple, has approached this Court by way of the present writ petition.

3. It is the case of the petitioner that the 4th respondent was appointed as a Trustee and Chairman of the Trust Board, even though the 4th respondent had not made a formal application, in Form-II, under the Trustees Rules, for being appointed as a Trustee, and that his appointment is not permissible and is in violation of the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act 1987 (for short 'the Act') and the Trustees Rules.

4. The 4th respondent has filed a counter affidavit disputing the same. However, the fact that he had not given an application for being appointed as a Trustee is not disputed. The Association of Founders of the Hindu Religious and Charitable Institutions of Andhra Pradesh had impleaded itself as the 5th respondent and filed a counter affidavit setting out the reasons why a member of the founder family need not apply under the Trustees Rules for being appointed as a member of the Trust Board.

5. Sri D.V. Sasidhar, learned counsel appearing for the petitioner relies upon the judgment of a learned Single Judge of the erstwhile High Court of Andhra Pradesh in **Andal Raghavan v. Deputy Commissioner, Endowments Department, Kakinada**¹ to contend that even though the member of a founder family is entitled to be appointed as a Trustee and Chairman of the Trust Board, the said appointment can be made only in accordance with the Rules and the said rules require an application to be made in Form-II.

6. A learned Single Judge of the erstwhile High Court of Andhra Pradesh, in *Andal Raghavan v. Deputy Commissioner, Endowments Department, Kakinada*, delivered on 26.03.2007, before the amendments made in Act 33 of 2007 came into force, had considered a similar issue. In this case, a person, recognised as a member of the family of the founder of a temple, had challenged the notification issued by the competent authority on various grounds, including the ground that a member of the family of the founder is entitled to be appointed as trustee and chairman of the Trust board even without applying in Form -II, set out in the

¹ (2007) 5 ALD 661=(2007) 4 ALT 509

Trustee Rules, 1987. The Learned Judge took the view that the earlier right of the hereditary trustees to be appointed as Trustees had been abolished by Section 16 of the Act and the right of such persons to be appointed as Trustee and Chairman of the Board, now flows from the provisions of Section 17 and 20 of the Act alone. As Section 17 (3) now prescribes the Trustees Rules, requiring an application to be made in Form-II, by all applicants, the members of the family of the founder of an Institution/temple cannot claim any exemption and cannot seek to be appointed as Trustees without making such applications.

7. It is the stand of the 2nd respondent in his counter affidavit that in view of the amendments carried out in Section 15(1) of the Act, the competent authority mentioned under Section 15(1) of the Act is restricted to the appointment of non-hereditary trustees as the right of the member of the founder family to become a member of the Trust Board is by operation of law and the same would not require any order or appointment to be made by the Government/competent authority.

8. The 2nd respondent would also point to the third proviso to Section 15(2) of the Act, which reads as follows:

"Provided also that where the Board of Trustees is not constituted for any reason, the recognized Founder or member of the Founder's family shall discharge the functions of the Board of trustees till a new Board of Trustees is constituted."

9. It is contended that a reading of the above proviso would show that a member of the founder family would be a permanent member of the Trust Board, and as such, would not require to be appointed by a formal order of the Government/competent authority. In such

circumstances, there would be no requirement of an application being made by such a member of the founder family.

10. While the judgment of the erstwhile High Court of Andhra Pradesh in *Andal Raghavan v. Deputy Commissioner, Endowments Department, Kakinada* required an application to be made before a member of the founder family could be appointed as a trustee, the contention of the Respondents, including the State, is that by the subsequent amendments, carried out by Act 33 of 2007, the amended provisions of section 15 of the Act, stipulates that the competent authority would constitute a board of trustees consisting of a certain number of persons at its pleasure, **EXCEPT** for founder family member and ex-officio members. This would mean that the appointment of founder family members, to the Board of Trustees, is outside the purview of the authority specified under various clauses of Section 15 (1) of the Act. Once the appointing authority is denuded of that power, the Trustee Rules, which are applicable to appointments made under Section 15, would not be applicable any more.

11. Heard Sri D.V. Sasidhar, learned counsel appearing for the petitioner, learned Government Pleader for Endowments for respondent Nos.1 & 2, Sri K. Ramanuja Chary, learned counsel appearing for respondent No.4 and Sri V. Venugopala Rao, learned counsel appearing for the impleaded respondent No.5.

CONSIDERATION OF THE COURT:

12. The provision of the Act, relating to the constitution of Trust Boards, by way of appointment of Trustees, is Section 15 (1) & (2) of the Act, which, prior to its amendment, reads as follows:

"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 them.

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

(3)

13. This provision was substituted, by the following, by Act 33 of 2007, with effect from 03.01.2008:

"15. Appointment of Board of Trustees:- (1) In respect of a Charitable or Religious Institution or Endowment,–

(i) Where the income for the institution exceeds Rs.20.00 crores (Rupees Twenty Crores) per annum, the Government shall constitute a Board of Trustees consisting of fifteen (15) persons at its pleasure except for founder family member and ex-officio members.

(ii) Where the income for the institution is between Rs.5.00 crores (Rupees five crores) to Rs.20.00 crores (Rupees twenty crores) per annum, the Government shall constitute a Board of Trustees consisting of eleven (11) persons at its pleasure except for founder family member and ex-officio members.

(iii) Where the income for the institution is between Rs.1.00 crore (Rupees one crore) to Rs.5.00 crores (Rupees five crores) per annum, the Government shall constitute a Board of Trustees consisting of nine (9) persons at its pleasure except for founder family member and ex-officio members.

(iv)"

14. The case of the respondents is:

A) The erstwhile High Court of Andhra Pradesh had, in the light of the provisions, prior to Act 33 of 2007, held that the provisions of Section 15 of the Act required the members of founder family to be appointed as Trustees and consequently, the Trustees Rules would apply and there was a requirement of making an application.

B) The Act 33 of 2007, by adding the words "**at its pleasure except for founder family member and ex officio member**" had waived the requirement of appointment of members of founder family as Trustees and by implication, a person on being recognised as a member of the founder family, automatically becomes a Trustee and Chairman of the Trust Board and there is no need for such a person to apply under the Trustees Rules.

15. The relevant provisions relating to the constitution of the Trust Boards and the appointment of trustees, in relation to members of founder family, which are contained in Chapter III of the Act, are proviso to Section 17 (1) of the Act, and Section 20 (1) (b).

16. The proviso to Section 17 (1) reads as follows:

"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."

17. This proviso not only speaks of an "appointment" as a Trustee, it also places a caveat that such an appointment can be made only of a founder family member, who is found to be qualified, as prescribed.

18. Similarly, Section 20 (1) (b) stipulates that:

“(b) Where the Founder or a member of the family of the founder is appointed as a Trustee, he shall be the Chairman of the Board of trustees.”

19. Even here, the Statute speaks of an “appointment”. These provisions proceed on the basis that even members of the Founder Family require to be appointed as Trustees.

20. Another relevant provision is the 2nd proviso to Section 15 (2) of the Act, which reads as follows:

“Provided further that in the case of a religious institution, the Archaka or where there is more than one Archaka, the Pradhana Archaka thereof shall be an ex officio member of the Trust Board notwithstanding clause (g) of sub section (1) of section 19:”

21. In the case of the Archaka or Pradhana Archaka, there is no appointment to the Board, they become part of the Board of Trustees by virtue of their office of Archaka or Pradhana Archaka. When such a provision was made for the Archakas, the absence of such a provision for members of the founder family would indicate that the Act requires members of founder family to be appointed every time a new Trust Board is constituted. This can obviously be done only under Section 15 of the Act.

22. The right of the family members of the founder family to become a Trustee and chairman of the Trust Board flows from the provisions of Section 17 and 20. The amendment, by way of Act 33 of 2007, only added the above extracted words to Section 15. No changes have been made in section 17 and 20. In the absence of any amendment to Section 17 and 20, the right of a member of a founder family will

continue to be regulated by the requirement of being appointed by the competent authority. The amendment to Section 15 does not, in any manner, alter that requirement. Such an interpretation of the amendment would only result in a conflict between the requirement of appointment under Section 17 and 20 and the supposed waiver of such appointment under Section 15.

23. The Respondents are also relying on the 3rd Proviso to Section 15 (2) to draw a conclusion that this provision, by implication, declares that every member of a founder family is a permanent member of the Trust Board and no appointment is necessary. It must be remembered that this provision was available even, prior to Act 33 of 2007, when the Act required members of the founder family to be appointed under Section 15 of the Act. In such a situation, no such implication can be inferred. Further, this proviso only makes an arrangement for management of institutions during periods when there is no Trust Board. There is nothing in the language of that proviso to raise an implied term that members of the Founder family are permanent Trustees.

24. Apart from the above, the scheme of the Act does not lend itself to such an interpretation. The proviso to Section 17 (1) requires verification whether a member of the founder family is qualified to be appointed as a Trustee, both under Section 18 of the Act and the Trustees Rules. Apart from this, it would also have to be verified whether he is suffering from any disqualifications set out under Section 19 of the Act. If a member of the Founder family is to be treated as Trustee the minute he is recognised as such, these provisions would be redundant. Another practical issue that would arise is in the event of more than one person

being recognised a member of the founder family. In such a situation, according to the proviso in Section 17 (1), only one such member can be appointed. Similarly, Section 20 (1) (b) speaks of a sole member of the founder family being appointed as the Chairman. If it is to be accepted that all persons recognised as members of founder family would automatically become permanent Trustees, this understanding would run contrary to express provisions of the Act.

25. Once it is apparent that a member of a founder family will become a Trustee only upon appointment, the provision for making such appointment would have to be traced. The only provision available for making such appointments, as can be seen from the foregoing, is Section 15 of the Act. In the circumstances, the interpretation of the Respondents cannot be accepted and it must be held that the members of the Founder family do not automatically become trustees and the chairman of the Board of Trust and would have to be appointed.

26. Coming to the effect and intent of the amendment to Section 15 (1), the change made in Section 15, by Act 33 of 2007, is the addition of the following words, in clauses (i) to (iv) of Section 15 (1), **"at its pleasure except for founder family Member and ex officio members"**. The reference to Ex officio members is to the Archaka or Pradhana Archaka, who would be entitled to be a part of the Board of Trustees of a religious institution, by virtue of the 2nd proviso to Section 15 (2) of the Act, extracted above. In the light of the fact that Archakas or Pradhana Archakas are ex officio, automatically part of the Trust Board, and are not appointed under Section 15 (1), the necessity of having to insert a clause that they would be exempt from such appointment under Section 15 (1) would not arise.

27. The addition of the above sentence, by Act 33 of 2007, was obviously for a different purpose. Section 17 (2) of the Act, prescribes a term of 2 years for every trustee. This term cannot be cut, prior to Act 33 of 2007, except where the Trustee is removed due to his disqualification under Section 19 or having ceased to hold the office under Section 21 of the Act. This would require an enquiry, with the opportunity being given to the Trustee to show cause that he is entitled to continue. The Government, by virtue of above changes, under Act 33 of 2007, have introduced the principle of "**at pleasure**" which would entitle them to cut short the tenure of any trustee without having to follow any of these procedures. However, any such exercise, to remove the members of the founder family by resorting to this principle, would result in no member of the founder family being in the Trust Board and that would be violative of both the proviso to Section 17 (1) and Section 20 (1) (b) which mandate the presence of such members. On account of the provisions of Section 17 and 20, and as Archakas or Pradhana Archakas are ex officio members of the Trust Board and are not appointed under Section 15 (1), the Government appears to have exempted these two categories of people from the "**at pleasure**" principle.

28. The matter does not rest there even though members of founder family are required to apply to be appointed as Trustees. They have been given a pre eminent status under the Act. The 3rd proviso to Section 15 (2), which is extracted above, mandates that where a trust board is not in existence, the member of the family of the Founder would discharge the functions of the Trust Board. The Proviso to Section 17 (1) declares that, while making appointments of Trustees, 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. Section 20 (1) (b) stipulates that where a founder or member of the family of the founder is appointed as a Trustee, he shall be the Chairman of the Board of Trustees.

29. This special position for the founders or members of their family has been created, by the statute, on account of the directions of the Hon'ble Supreme Court in **Pannalal Bansilal Pitti and Ors., v. State of Andhra Pradesh & anr.**,². The Hon'ble Supreme Court, recognising the pivotal role of founders or their family members play in such institutions, had directed that every Trust Board should accommodate founders or their family members, wherever they are available, and that the founders or their family members should head the Trust Board.

30. Another relevant provision is Rule 5 (2) of the Trustees rules which requires that:

"If no applications are received for the appointment of Trustees, the competent authority shall ascertain the names of the persons qualified under section 18 and free from disqualifications in terms of section 19 and obtain applications from them for being appointed as Trustees"

31. The proviso to section 17 (1) of the Act, mandates the compulsory presence of a founder family member in the Trust Board and Section 20 (1) (b) directs that, if a founder family member is in the Board of Trustees, such a member has to be made the Chairman. A reading of these provisions along with the above Rule, makes it the duty of the appointing authority to ensure that either the founder or any one

² (1996) 2 SCC 492 = AIR 1996 SC 1023

members of the family of the founder is brought into the Board of Trustees as Chairman of the Board, as long as that founder or member is qualified and does not suffer from any disqualifications. This would mean that where an Institution/Temple has persons, who are recognised as founder or a member of the family of the founder, one position of Trustee has to be kept aside for them. If no application is received from the persons in that category, within the time stipulated in the notification calling for such applications, the appointing authority would have to invite such persons to make an application and appoint one of them as a Trustee and consequently Chairman of the Trust Board. It is only when the founder or family members of the founder decline to be appointed as Trustees that the appointing authority can look to fill up the position, which is kept exclusively for founders or their family members, with other applicants.

32. In the present case, it is true that the 4th Respondent did not apply for being appointed as a Trustee. However, that would require the appointing authority to obtain such an application from the 4th Respondent. In the present case, the appointing authority, instead of formally obtaining such an application, had straightaway appointed the 4th respondent. This is not in accordance with the requirement of law and would have to be set aside. However, this order would not take away the right of the 4th respondent to be appointed as the Trustee and Chairman of the Trust Board of the Temple.

33. Therefore, this Writ Petition is allowed, setting aside the appointment of the 4th Respondent as Trustee and Chairman of Sri Seetharama Swamy Temple, Moturu Village, Gudivada Mandal, Krishna District, while leaving it open to the appointing authority to obtain an

application from the 4th Respondent to be appointed as Trustee and Chairman, and thereafter, to appoint the 4th Respondent as Trustee and Chairman of the above Temple, in accordance with the Act and the Trustees Rules.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

14th September, 2021
Js.

R. RAGHUNANDAN RAO, J.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.22289 of 2020

Js.

14th September, 2021