HIGH COURT OF ANDHRA PRADESH

MONDAY ,THE FOURTEENTH DAY OF JUNE

TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE M.VENKATA RAMANA

WRIT PETITION NO: 6694 OF 2020

Between:

1. P.Ashok Gajapathi Raju, s/o (late) Sri P.V.G. Raju, Aged about. 68 years, President / Chairman,
   Maharajah Alak Narayan Society of Arts and Science (MANSAS) Trust, Fort Vizianagaram,
   Residing at No.5 Bungalow, Cantonment, Vizianagaram, Vizianagaram District.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Revenue (Endowments-II) Department, Secretariat, Velagapudi,
   Rep.by its Principal Secretary.
2. The Commissioner of Endowments, Gollapudi, Amavarathi.
3. Maharajah Alak Narayan Society of Arts and Science (MANSAS) Trust, Fort Vizianagaram,
   Vizianagaram District,
   rep.by its Executive Officer.
4. Kum.Sanchaitha Gajapathi Raju, d/o (late) Sri Ananda Gajapathi Raju, aged about. not known, occ. not known, r/o A-304, Defense Officers' Apartment,
   Beach Road, Opp. VUDA Park, Visakhapatnam - 17.

...RESPONDENTS

Counsel for the Petitioner(s): M VIDYASAGAR

Counsel for the Respondents: ADDL ADVOCATE GENERAL (AP)

The Court made the following: ORDER

HON'BLE SRI JUSTICE M.VENKATA RAMANA

WRIT PETITION Nos.6692, 6694, 6857 & 9895 of 2020

COMMON ORDER:

In W.P.No.6692 of 2020 and W.P.No.6694 of 2020 Sri P.Ashok Gajapathi Raju is the petitioner. W.P.No.6692 of 2020 is filed questioning G.O.Ms.No.73, Revenue (Endowments-II) Department, dated 03.03.2020 in recognising the respondents 4 to 6 viz., Kum. Sanchaitha Gajapathi Raju, Smt. Urmila Gajapathi Raju and Smt. R.V.Sunitha Prasad as founder family members of the 3rd respondent-Maharajah Alak Narayan Society of Arts & Science (MANSAS) Trust, Vizianagaram by the 1st respondent viz., the Principal Secretary representing the State of Andhra Pradesh, Revenue (Endowments-II) Department on the recommendations of the 2nd respondent- the Commissioner of Endowments, Andhra Pradesh.

2. W.P.No.6694 of 2020 is filed questioning G.O.Ms.No.74, Revenue (Endowments-II) Department, dated 03.03.2020 in appointing the 4th respondent- Kum.Sanchaitha Gajapathi Raju as the Chairman of 3rd respondent MANSAS trust by the 1st respondent on the recommendation of the 2nd respondent.

3. While these two petitions relate to the affairs of MANSAS trust, W.P.No.9895 of 2020 and W.P.No.6857 of 2020 relate to Sri Varaha Lakshmi Narasimha Swamy Vari Devasthanam, Simhachalam, which is the 3rd respondent therein. Sri P.Ashok Gajapathi Raju is the petitioner in W.P.No.9895 of2020, who is the 5th respondent in W.P.No.6957 of 2020. Smt. R.V.Sunitha Prasad is the petitioner in W.P.No.6857 of 2020, who is the 6th respondent in W.P.No.9895 of 2020.

4. In both these writ petitions G.O.Ms.No.72, Revenue (Endowments-II) Department, dated 03.03.2020 is questioned whereby the 4th respondent-Kum. Sanchaitha Gajapathi Raju is appointed as hereditary trustee/chairman of the 3rd respondent temple replacing Sri Ashok Gajapathi Raju.

5. In W.P.No.9895 of 2020, the relief included questioning the recognition of Kum.Sanchaitha Gajapathi Raju, 4th respondent in both these writ petitions recognising her as a member of the founder family. The respondents 1 and 2 in both these writ petitions are the same respondents referred to in W.P.No.6692 of 2020 and W.P.No.6694 of 2020. Smt. Urmila Gajapathi Raju is the 5th respondent in W.P.No.9895 of 2020.

6. The parties as arrayed in W.P.No.6992 of 2020 shall be referred to hereinafter, for convenience.

7. Vizianagaram Estate was a Principality/Zamindari in then composite State of Madras. It is now a part of the State of Andhra Pradesh. It was abolished and was taken over by the Government of India on 07.09.1949. The last known Crown Prince of this Principality was Sri P.Vijaya Rama Gajapathi Raju ('Sri P.V.G.Raju', for short). He died on 14.04.1995. Sri P.Ananda Gajapathi Raju, Sri P.Ashok Gajapathi Raju, Smt. R.V.Sunitha Prasad, Sri Alak Narayana Gajapathi Raju, Smt. V. Sudani Devi and Sri Monish Gajapathi Raju are the children of Sri late P.V.G.Raju. Sri Alak Narayan Gajapathi Raju was the father of Sri P.V.G.Raju.

8. Sri Ananda Gajapathi Raju died on 26.03.2016. Kum. Sanchaitha Gajapathi Raju is his daughter by his 1st wife. He married Smt. Sudha

Gajapathi Raju upon his first marriage ending in divorce and Smt.Urmila Gajapathi Raju is his daughter by his 2nd wife.

Sri Varaha Lakshmi Narasimha Swamy vari Temple, Simhachalam- Admitted and undisputed facts:

9. The erstwhile Principality of Vizianagaram for centuries was known for patronising various institutions like temples and was given to promote fine arts, cultural activities and education. In that process, this family viz., Pusapati Gajapathi family had endowed about 22 villages for performance of regular rituals of Dhoopa, Deepa Naivedyam while gifting away fabulous jewellary to Sri Varaha Lakshmi Narasimha Swamy Varu of Simhachalam ('temple', for short), a well-known Vishnavite temple in India and elsewhere. Such endowment was made with an object of self-sustenance of this temple without depending on the public contributions, though it was open to everyone and to the public.

10. The management of this temple continued for centuries in the hands of this family of Maharajas of Vizianagaram Principality. The affairs of the temple so continued till the year 1949 till it came under the administration and purview of Endowment Department of the then composite State of Madras. Sri P.V.G.Raju remained on recognition as hereditary trustee of this temple first under the provisions of Madras Hindu Religious and Charitable Endowments Act (Act 19 of 1951) and thereafter in terms of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 17 of 1966). After the demise of Sri P.V.G.Raju, Sri Ananda Gajapathi Raju, being the eldest son and next in the agnatic line of succession applied for recognition as founder family member and trustee/chairman of this temple. As per the proceedings of then Assistant Commissioner, Endowments Department,

Visakhapatnam dated 03.05.1996, Sri Ananda Gajapathi Raju was confirmed and recognised as a member from founder family by usage and custom and thus a declaration was issued by the competent authority. Sri Ananda Gajapathi Raju thus continued as hereditary trustee of this temple till his demise for nearly 21 years.

11. After his death, the petitioner-Sri Ashok Gajapathi Raju was recognised by the Government of Andhra Pradesh as founder family member of this temple vide G.O.Ms.No.123, Revenue (Endowments-II) Department, dated 31.03.2016 and who continued being the Trustee/Chairman of this temple trust board till G.O.Ms.No.72 dated 03.03.2020 was issued.

12. By virtue of G.O.Ms.No.71, dated 03.03.2020, the respondents 4 to 6 viz., Kum. Sanchaitha Gajapathi Raju, Smt. Urmila Gajapathi Raju and Smt. R.V.Sunitha Prasad were recognised as founder family members of this temple. By G.O.Ms.No.72, dated 03.03.2020, the respondent no.4- Kum.Sanchaitha Gajapathi Raju was appointed as the Chairman/Trustee of this temple replacing the petitioner- Sri Ashok Gajapathi Raju.

<u>Maharaja Alak Narayan Society of Arts & Science (MANSAS)-Admitted and undisputed facts</u>

13. Sri Late P.V.G.Raju by registered deed of settlement dated 12.11.1958 styled 'the Deed of Trust' settled extensive properties including lands in favour of Maharajah Alak Narayan Society of Arts & Science (MANSAS), Vizianagaram. This deed called Maharajah Alak Narayan Society of Arts & Science as 'trustee'. By then, various educational institutions were being run and were being maintained by

the society. Such endowment was made for the benefit of these educational institutions. This deed called these institutions as beneficiaries.

14. MANSAS, Vizianagaram was a society registered under the Societies Registration Act on 12.11.1958 under Act 21 of 1860 bearing Sl.No.26 of 1958-59. The main object of this society is to promote and advance the cause of education in general providing best possible education to all the needy, without any reference to caste, creed, sect etc.

15. Admittedly, 14,186.32 acres of land in Srikakulam, Vizianagaram, Visakhapatnam and East Godavari Districts was donated by Sri P.V.G.Raju in favour of this society. Sri Visweswara Gajapathi Raju, brother of Sri P.V.G.Raju, also gifted his own properties in an extent of 992.36 acres in Vizianagaram and Visakhapatnam Districts to MANSAS.

16. The educational institutions run by this society included 1. M.R.High School, 2. M.R. College (A), 3. M.R.College of Education, 4. M.R. Degree College, 5. M.R. Model High School, 6. M.R. Girls High School, 7. MANSAS English Medium School, 8. M.R.V.R.G.R. Law College, 9. M.R.P.G. College, 10. M.R.V.R.R.-II Memorial Junior College, 11. M.V.G.R. College of Engineering (A), 12. M.R.College of Pharmacy and 13. School of Management Studies-M.R.P.G. College. Among them, M.R.High School and M.R.College were established by the ancestors of Sri P.V.G.Raju.

17. Sri late P.V.G.Raju remained the Chairman of MANSAS Society. It has its own rules apart from Memorandum of Association for the administration and management of the affairs of this society and its

beneficiaries viz., the educational institutions. As in case of Sri Simhachalam Temple, upon the demise of Sri P.V.G.Raju, Sri Ananda Gajapathi Raju became its Chairman having had been recognized as founder member of the family by the competent authority. After his demise, Sri P.Ashok Gajapathi Raju stepped in as the chairman of this society by virtue of G.O.Ms.No.138, Revenue (Endowments-II) Department, dated 07.04.2016 and continued till G.O.Ms.Nos.73/74 dated 03.03.2020 were issued.

18. The manner of issuance of all these four G.Os. are impugned in all these writ petitions and thus they are under challenge. The grounds of challenge set up in W.P.No.6692 and W.P.No.6694 of 2020 are identical and even the respondents raised opposition in relation thereto in their separate counters in an identical manner.

19. The contentions of the petitioner in W.P.No.6692 of 2020 and W.P.No.6994 of 2020 relating to MANSAS are as follows:

> (i) that the Government of Andhra Pradesh did not interfere into the affairs of MANSAS when he took over its management in line of succession after the demise of his brother Sri Ananda Gajapathi Raju as its chairman and thus the Government was in no way interested to disturb the management which was being carried on in conformity with the deed of trust. G.O.Ms.No.73 dated 03.03.2020 appointing the respondents 4, 5 and 6 totally frustrates the object of the settlor, who while executing the trust deed put forth certain conditions and which are also incorporated in the Register of Endowments maintained under Section 38 of Act 17 of 1966 (Present, Section 43 of Act 30 of 1987). Column-4 of the entry

in this register refers to the intention of the founder that the eldest male lineal descendant of the family shall be the President/Chairman of the society. Therefore, as the lineal male descendant, the petitioner is entitled to head the trust as the President/Chairman.

(ii) The reasons assigned in the G.O.Ms.No.73 dated 03.03.2020, of appointment of these alleged founder family members are running contrary to the deed of trust and that they are against Rule-II(a) of the Rules of MANSAS. The reason that they are against Section 16 of Act 30 of 1987 is *ex facie* illegal. Another reason referring to amended provisions of Hindu Succession Act and that the Government has over-riding power in issuing this G.O. is *ex facie* illegal.

(iii) It is reflecting non application of mind and Section 17 itself speaks of agnatic line of succession that did not refer to cognatic line of succession. Thus, the Government is wholly unjustified in acceding to the request of the respondents 4 to 6 as if MANSAS is a property belonging to the Government and not the property of the settlor, who established the trust, acting against the wishes of the founder in establishing this trust.

(iv) When the Government through the 1st respondent had honoured the deed of trust in letter and spirit right from the year 1958, the compelling circumstances in taking such action in issuing the impugned G.O.Ms.No.73 dated 03.03.2020 is not known. The intention of the Government appears to bring the 4th respondent into the picture as founder family member

even though she did not have any right conferred upon her as a successor in the line of succession to the original settlor viz., Sri late P.V.G.Raju.

(v) The provisions of Endowments Act relating to the constitution of the Board of Trustees can neither be enforced nor can be made applicable to MANSAS. Appointing the 4th respondent as chairman of MANSAS as if on rotation through G.O.Ms.No.74 dated 03.03.2020 is *ex facie* against the intentions of the founder and as recorded in the Register of Endowments relating to the society in Column-4. By G.O.Ms.No.139 dated 07.04.2016 and G.O.Ms.No.155 dated 27.04.2017, Revenue (Endowments.II) Department, the Government appointed members to MANSAS in conformity with the deed of trust and that the present action of the Government in superceding these G.Os., virtually goes to the extent of closing the doors of the trust to all the family members facilitating the 4th respondent to administer this trust single handedly.

20. In the counter affidavit of the 1st respondent viz., the State of Andhra Pradesh rep.by its Chief Secretary, the action in issuing both the impugned G.O.Ms.Nos.73 and 74 dated 03;.03.2020 is justified while questioning the very maintainability of the writ petitions at the instance of the petitioner, who is no more Chairman of MANSAS trust. While referring Maharajah Alak Narayan Society of Arts & Science (MANSAS) Trust, Vizianagaram as a public charitable institution in terms of Section 6 (a)(i) of Act 30 of 1987 and registered under Section 38 of Act 17 of 1966 it is stated that in terms of Sections 155 and Section 16 of the A.P.

Act 30 of 1987 the stipulation in the trust deed and also in the bylaws of the society requiring eldest male lineal descendant to be the President of the society is non-est.

21. It is further stated in this counter-affidavit that after following due procedure upon representations made by the respondents 4 to 6, they were appointed as founder family members. It is also stated that upon the request of the 4th respondent, by representation dated 04.12.2019, G.O.Ms.No.74 dated 03.03.2020 was issued appointing her as the Chairman of MANSAS trust, Vizianagaram on rotation basis to manage its affairs, in accordance with Section 20(b) of Act 30 of 1987. It is further stated in this counter-affidavit that the petitioner was not appointed as founder family member or Chairman because of his male lineage and it was on his representation to the Government dated 28.03.2016 to declare him as the founder family member/Chairman, he was so appointed.

22. It is further stated in this counter- affidavit of the 1st respondent that there is no prohibition in A.P. Act 30 of 1987 to appoint a woman as founder family member. It is further stated that the petitioner should approach A.P. Endowments Tribunal under Section 87(1) of A.P. Act 30 of 1987 to decide the issue of founder member from the family of the founder of the institution or the endowment and in view of Section 151 of A.P. Act 30 of 1987 jurisdiction of other Courts is barred to consider such question. It is further stated that wishes of the founder of the institution referred to in Section 17 of this Act gives guidance to the Government, in so far as it is consistent with the provisions of the Act and since the respondents 4 to 6 answer the agnatic line of succession to recognise them as founder family members and also in appointing the 4th

respondent as chairman of the trust. It is further stated that any debarment to hold a position on the basis of gender would be violative of Article-14 of the Constitution of India.

23. On behalf of MANSAS through its executive officer in the counter affidavit similar contentions are raised as stated above justifying the action of the Government in issuing these two impugned G.Os.

24. The 4th respondent in her counter affidavit specifically questioned the maintainability of the writ petitions while justifying action of the Government in issuing two impugned G.Os. stating that there is no infirmity therein either in recognising her as founder family member or as the Chairman of the MANSAS, being daughter of Sri P.Ananda Gajapathi Raju and being undisputedly a member belonging go the family of the founder. She further contended that there is no legal prohibition for a woman to be appointed as chairman of a public charitable institution viz., MANSAS under Act 30 of 1987. While contending that this trust is under general supervision and control of the Government as well as the Commissioner of Endowments, it is stated that the Government is empowered to pass any order which may be deemed necessary for proper administration of this institution.

25. It is further stated in this counter-affidavit of the 4th respondent referring to Section 16 of Act 30 of 1987 as well as Section 160, as to the over-riding effect upon the terms and conditions of the deed of trust and that the petitioner should approach A.P. Endowments Tribunal in terms of Section 87 of A.P.Act 30 of 1987, providing for an equally efficacious remedy for relief, if any. She further stated that Section 151 of A.P.Act 30 of 1987 barred institution of a suit or legal proceedings in respect of administration and management of an institution or endowment or other

matters connected thereto, she refefrred to Cr.No.399 of 2019 registered against the petitioner and others in III-town Police Station, Visakhapatnam, for certain offences including for dishonestly misappropriating and converting the property to their own use and questioned the qualification of the petitioner in appointing him as chairman of the trust.

26. The 5th respondent filed a separate counter affidavit while justifying the action of the Government in issuing G.O.Ms.No.73 dated 03.03.2020 in recognising them as members of the founder family, she stated that MANSAS Society and the Trust are separate entities governed by the respective laws. She further stated in this counter-affidavit that the petitioner-Sri Ashok Gajapathi Raju cannot claim as the President or Chairman of MANSAS trust. Citing the rules of the society, she further contended that in the absence of any prescribed line of succession to the trust in the deed of trust by the author and in view of abolition of hereditary trustees, the agnatic lineal descendants have to be recognised as members of the founder family under section 17 of Act 30 of 1987. She further contended that she is entitled to be considered to the office of the chairman of MANSAS trust as a founder family member in terms of Sections 17 and 20 of Act 30 of 1987 and that even otherwise the writ petition cannot be maintained since there is an efficacious alternative remedy to approach Endowment Tribunal under Section 87 of this Act for the petitioner.

27. The 5th respondent in her counter affidavit, further stated that no notice or opportunity was given to her nor any enquiry was conducted in terms of Act 30 of 1987, before issuing G.O.Ms.No.74 dated 03.03.3020 appointing the 4th respondent as the Chairman. She also contended that

general rules of succession and provisions of Hindu Succession Act have no application in view of Explanation II to Section 17(1) of Act 30 of 1987. She further contended that the 4th respondent cannot be recognised as a member of founder family since she has relinquished her right, title and interest to any of the properties of the family evidenced by a deed of family arrangement dated 27.12.1995 entered into between Sri P.Ananda Gajapathi Raju, the 4th respondent and Kum.Suchitra Gajapathi Raju, rep.by their mother Sri Uma Ananda Gajapathi Raju, that was acted upon, which became final.

28. On behalf of the petitioner, a reply affidavit is filed denying the contentions raised on behalf of the 1st respondent and which is adopted with reference to the contentions raised by the 4th respondent, in her counter-affidavit.

29. In W.P.No.6694 of 2020, on behalf of the respondents 3 and 4 similar contentions are raised in W.P.No.6692 of 2020.

30. In W.P.No.9895 of 2020 (relating to the temple at Simhachalam) the contentions of the petitioner are as follows:

> i. As per custom and usage and as per law agnatic line of succession is followed in recognising founder family member, whereby the eldest surviving male descendant in the family will become the trustee of the temple at Simhachalam, in exclusion of others. Thus, well-established custom was followed during the lifetime of Sri late P.Ananda Gajapathi Raju, elder brother of the petitioner, when he was appointed as the trustee, who continued as a trustee/Chairman of the temple for an uninterrupted period of 21 years. It was followed even in the case of the petitioner when

he was appointed in the year 2016 as founder family member/Trustee-cum-Chairman of this temple.

ii. G.O.Ms.No.252, Revenue (Endowments-II) Department, dated 20.02.2020 was issued by the Government constituting a trust board to this temple, that recognized founder family member as Chairman viz., the petitioner, since he was the only recognised founder family member by then and that the 4th respondent was appointed as one of the members of the trust board. However, strangely without any notice and without even showing any valid reason, the Government nullified the above G.O. partially while issuing G.O.Ms.No.72 dated 03.03.2020 replacing the petitioner appointing the 4th respondent as founder family member-cum-Chairman. This act is illegal and contrary to the provisions of Act 30 of 1987. There is no provision in this Act to alter such orders and once a trust board is appointed.

iii. The petitioner has got right to the trustreeship under Act 30 of 1987 and the 1st respondent absolutely has no authority to abruptly replace him upon appointing the 4th respondent. If at all the Government wanted to follow the principle of rotation, it should be done only after issuing notice to all the members of the family in the 1st generation and upon giving an opportunity by fixing specific system of rotation on a rational basis. G.O.Ms.No.72 dated 03.03.2020 did not meet this requirement.

iv. Appointing the 4th respondent who belonged to the 3rd generation in the family of late P.V.G.Ranu, ignoring the family members belonging to the 2nd generation is bad, which is in a pick and choose manner, because of some political reasons. When

counter claims were made by female members in the family belonging to the next generation against the 4th respondent, they have to be adjudicated and decided by the Endowment tribunal as per section 87 of Act 30 of 1987 and in that process the Government has no jurisdiction to entertain multiple claims. Reasons assigned in the orders referring to Section 6 of the Hindu Succession Act, is bad and failing to observe usage and custom giving precedence to the will of the founder, to the eldest surviving male descendant, is improper. The practice which has been in vogue for more than three centuries by now, in that process, is ignored. Hence, the G.Os.so impugned are *ex facie* illegal and are not in accordance with the provisions of Act 30 of 1987.

31. The 1st respondent in this writ petition justified the action of the Government in issuing the impugned G.O. including G.O.Ms.No.71 dated 03.03.2020 claiming that due procedure has been followed in respect thereof. It is further stated that on the representation made by the 4th respondent she was initially appointed as one of the members of the trust board of the temple vide G.O.Ms.No.252 dated 20.02.2020 and that, she was recognized as founder family member whereupon she was appointed as the Chairman cum trustee of the board vide G.O.Ms.No.72 dated 03.03.2020.

32. It is further stated in the counter-affidavit of the 1st respondent that custom and usage propounded by the petitioner and agnatic line of succession whereby eldest male lineal descendant in the family should be the trustee of the temple in exclusion of others is incorrect and that in view of Section 8 of the A.P.Act 30 of 1987, for administration, general supervision and control of the temple, the respondents 1 and 2

issued G.O.Ms.No.72 dated 03.03.2020 appointing the 4th respondent as its chairman in exercise of the powers conferred under the Act including under Section 20(1)(a) by nomination.

33. While referring to the effect of Section 16 of A.P.Act 30 of 1987, abolishing hereditary trusteeship, it is stated by the 1st respondent that usage and custom claimed by the petitioner cannot stand thereupon. It is further stated that in terms of Section 87 of A.P. Act 30 of 1987, when there is a dispute, the petitioner should approach A.P.Endowment Tribunal and therefore not only on this ground but also on account of Sections 151 and 160 of the said Act, the writ petition could not be maintained, since there is bar of institution of any suit or legal proceedings and in as much as there is equally efficacious remedy available for the petitioner.

34. It is further stated in this counter-affidavit by the 1st respondent that reference to the provisions of Hindu Succession Act in the impugned G.O. is only for the limited purpose of reflecting the policy of the State in overcoming the gender based disentitlement to property and the same being relevant principal for the purpose of Section 17 of this Act. It is also stated by the 1st respondent that the appointment of the petitioner was limited by the tenure and therefore his contention that he has been removed from the Chairmanship of the institution without following the provisions of Act 30 of 1987, is not correct.

35. The 3rd respondent followed the same line of defence of the 1st respondent, in contesting this writ petition.

36. The 4th respondent justified action of the Government stating that there is no infirmity in recognising her as founder family member as well

as appointing as Chairman of the temple trust board, which the petitioner has no reason or right to question. She further contended that upon expiry of the term of the petitioner as the chairman of this trust board, she approached the Government to recognize her as founder family member and pursuant to her representation the Government not only issued G.O.Ms.No.71 dated 03.03.2020 but also appointed as the chairman of this trust board vide G.O.Ms.No.72 dated 03.03.2020.

37. Referring to the powers of the respondents 1 and 2 in terms of Section 8 and Section 20(1) of the Act 30 of 1987, the 4th respondent contended that the Government is entitled to nominate her as Chairman of the Board of Trustees finding her legally competent and meritorious apart from being from the family of the founder. She also raised an objection in terms of Section 16 of A.P.Act 30 of 1987 questioning the contention of the petitioner that only a male lineal descendant of the founder could be appointed either upon the application of the Rule of Primogeniture or usage and custom, since abolished. Since the temple trust being a public charitable institution there is no legal prohibition, according to the 4th respondent for a woman being appointed as its chairman and Section 17(5) of the said Act contemplates appointment of a woman as one of the members of the trust board including Rule-9 of the Rules framed under this Act.

38. The 4th respondent also questioned the maintainability of the writ petition on the ground that the petitioner has an equally efficacious remedy, by approaching the Endowment Tribunal under Section 87 of the Act 30 of 1987. She further raised an objection in terms of Section 151 of the said Act as to maintainability of the writ petition as is set out by the 1st respondent.

39. The 5th respondent also justified the action of the Government in issuing G.O.Ms.No.71 dated 03.03.2020 in recognising her as one of the founder family members in relation to the temple Trust Board. However, on the same basis as set out in W.P.No.6692 of 2020 that on behalf of the 4th respondent a family arrangement was entered into through her mother dated 27.12.1985, the 5th respondent stated that the 4th respondent cannot claim as a member of the founder family in terms of explanation-II to Section 17(1) of Act 30 of 1987. She further claimed that she is entitled to be considered for the office of the Chairman and hereditary trustee of this temple and that without there being any notice or opportunity to her, the 4th respondent was appointed as such, issuing G.O.Ms.No.72 dated 03.03.2020, violating principle of natural justice and without adhering to the procedure under Act 30 of 1987. She further stated that provisions of Hindu Succession Act have no application in view of explanation-II to Section 17(1) of Act 30 of 1987 and reference to it in G.O.Ms.No.72 dated 03.03.2020 is bad.

40. In W.P.No.6857 of 2020, the 6th respondent while questioning the appointment of the 4th respondent in G.O.Ms.No.72 dated 03.03.2020 as chairman of the temple trust board ignoring her claim as one belonging to earlier generation and in agnatic line of succession, she contended that the petitioner was managing this trust board as the Chairman being recognised as founder trustee as per agnatic line of succession and she being the sister of the petitioner, stands on the same basis. She further stated that she applied to the 1st respondent to recognise her as one of the founder family members of the temple trust whereby the Government issued G.O.Ms.No.71 dated 03.03.2020 recognising her along with the 4th respondent as well as the 5th respondent. She further

claimed that she has better right in comparison to the 4th respondent, being the daughter of Sri P.V.G.Raju, which the Government is aware. Thus, she contended that in line of rotation she should have been considered being the Chairman of the temple trust board on par with the petitioner and that in illegal exercise of authority, she has been kept aside preferring the 4th respondent in accommodating her. Thus, it is stated that well established usage and custom has been ignored and in denial of right to her in the process.

41. Referring to issuance of G.O.Ms.No. 252 dated 20.02.2020 to accommodate the 4th respondent as the member of non-hereditary trust board, it is stated by the 6th respondent, in this W.P.No.6857 of 2020 that the 1st respondent in a desperate and hasty manner tried to facilitate her bringing out G.O.Ms.No.72 in appointing her as the Chairman, upon partially withdrawing G.O.Ms.No.252 dated 20.02.2020. It is further stated that the procedure contemplated under Sections 15 and 17 of Act 30 of 1987 was not followed in appointing the Board of Trustees. Referring to the manner of preferring the 4th respondent as the Chairman on account of fixing rotation, she contended like the petitioner in W.P.No.6692 of 2020. Thus, she questioned issuance of G.O.Ms.No.72 dated 03.03.2020 in appointing the 4th respondent as Chairman/Hereditary trustee to the temple Trust Board.

42. Counter affidavits are filed on behalf of respondents 1, 3 and 4 in this writ petition raising similar objections as are raised in W.P.No.6692 of 2020.

43. Heard Sri D.V.Seetha Rama Murthy, learned Senior Counsel for Sri V.Venu Gopalarao, learned counsel for the petitioner, learned Additional Advocate-General for respondents 1 and 2, Sri K.Madhava Reddy, learned

counsel for respondent No.3, Sri Vedula Venkata Ramana, learned Senior counsel for Sri T.V.Jaggi Reddy, learned counsel for the 4th respondent, Sri P.Rajasekhar, learned counsel for 5th respondent as well as Sri E.Sambasiva Pratap, learned counsel for respondent No.6.

44. Common arguments are addressed in all these writ petitions treating W.P.No.6692 of 2020 as the lead matter. Written submissions are also filed on behalf of the petitioner and the respondents 1,4 and 5. Hence, all these writ petitions are being disposed of by this common order.

45. Now the following points arise for determination:

1. Whether the petitioner has any status in relation to MANSAS Trust and Sri Varaha Lakshmi Narasimha Swamy Temple Trust Board, Simhachalam and has right to question impugned G.Os. 71 to 74 dated 03.03.2021?
2. Whether the impugned G.Os. are issued in proper exercise of authority and jurisdiction under Act 30 of 1987 by the first respondent and their effect *vis-à-vis* the petitioner and the respondents 4 to 6?
3. Whether the petitioner has an alternative efficacious remedy than approaching this Court under Article 226 of Constitution of India?
4. What shall be the consequences upon the findings on points 1 to 3?

46. **POINT No.1:** The petitioner described himself in W.P.No.6692 of 2020 as the President/Chairman of MANSAS Trust, Vizianagaram and in W.P.No.9895 of 2020 as Founder Family Member of Sri Varaha Lakshmi Narasimha Swamy Vari Devasthanam, Simhachalam, Visakhapatnam District. The respondents have questioned the status so claimed by the petitioner in all these writ petitions.

47. Admittedly, the petitioner is the second son of Sri late P.V.G.Raju, who was undisputedly the founder of MANSAS and was declared as well as recognised as the founder trustee of the temple referred to above.

48. The petitioner was appointed as Founder Family Member of MANSAS vide G.O.Ms.No.138 Revenue (Endts.II) Department, dated 07.04.2016 and by virtue of G.O.Ms.No.123 Revenue (Endts.II) Department, dated 31.03.2016 as Founder Family Members of the afore stated temple at Simhachalam. It is pertinent to state that he continued in such capacity including as Chairman of MANSAS Trust and as Chairman of the Temple Trust Board till 03.03.2021, when the impugned G.Os. were issued. None of these impugned G.Os. superceded these two G.Os. i.e., G.O.Ms.No.138 and G.O.Ms.No.123. Hence, the petitioner remained and continued as recognised member of founder family, even now.

49. This status of the petitioner has its own significance in this matter. In all the impugned G.Os. there is clear and categorical statement of such status, capacity and position of the petitioner. The opening paragraph of G.O.Ms.No.73 dated 03.03.2020 for instance states as follows:

> "In the references 1st read above, Government have issued orders declaring Sri Ashok Gajapathi Raju, S/o (Late) Sri P.V.G.Raju, Vizianagaram as member of the Family of the Founder of MANSAS Trust, Vizianagaram and he is continuing as such till date."

50. Similarly in G.O.Ms.No.74 dated 03.03.2020 the opening paragraph reads as under:

> "In the G.O. 1st read above, Government have issued orders declaring Sri Ashok Gajapathi Raju, S/o (Late) Sri P.V.G.Raju, Vizianagaram as member of the Family of the Founder of MANSAS Trust, Vizianagaram and he is continuing as such till date."

51. Likewise in G.O.Ms.No.71 Revenue (Endts.II) Department, dated 03.03.2020 it is stated as follows:

> "In the reference 1st read above, Government have issued orders declaring Sri Ashok Gajapathi Raju, S/o(Late) Sri P.V.G.Raju, Vizianagaram as member of the Family of the founder of Sri Varaha Lakshmi Narasimha Swamyvari Devasthanam, Simhachalam, Visakhapatnam and he is continuing as such till date."

52. In G.O.Ms.No.72, Revenue (Endts.II) Department, dated 03.03.2020, it is also stated as follows:

> "In the references 1st read above, Government have issued orders declaring Sri Ashok Gajapathi Raju, S/o (Late) Sri P.V.G.Raju, Vizianagaram, as member of the Family of the Founder of Sri Varaha Lakshmi Narasimha Swamyvari Devasthanam, Simhachalam, Visakhapatnam and he is continuing as such till date."

53. The contribution of Vizianagaram principality for MANSAS Trust and the temple trust of Sri Varaha Lakshmi Narasimha Swamyvari Devasthanam, Simhachalam, Visakhapatnam, has been eulogized in the counter affidavits of the first respondent.

54. In respect of the temple trust at Simhachalam, the counter affidavits of first and third respondent gave out clearly in this respect and the association of this family from the time this temple came under the control of the Endowment Department in the erstwhile composite State of Madras and later under the control of A.P.Charitable and Hindu

Religious Institutions and Endowments Department in terms of Act 17 of 1966. It was then recognised as an institution under Section 6 of Act 17 of 1966. In paras 5 and 6 of the counter affidavit of the first respondent, it is stated that this temple since inception was under the jurisdiction of the erstwhile Maharajas of Vizianagaram, who had endowed vast extents of land for this temple for the purpose of '*dhoopa deepa naivedyam*' to make it self-sufficient.

55. It is also stated in these paragraphs that Sri late P.V.G.Raju was managing this Temple Trust being recognised hereditary Trustee followed by Sri P.Ananda Gajapathi Raju and later by the petitioner. The trusteeship during the lifetime of Sri P.V.G.Raju and Sri P.Ananda Gajapathi Raju was admittedly on account of the hereditary lineage in managing the affairs of this temple. It was never questioned by any one at any stage.

56. Significant to note that during lifetime of Sri late P.V.G.Raju and Sri late Ananda Gajapathi Raju, Act 30 of 1987 had come into force (w.e.f. 23.05.1987).

57. It is also necessary in this context to consider the recognition of Sri late P.V.G.Raju and Sri late Ananda Gajapathi Raju in relation to this temple at Simhachalam. Sri late P.V.G.Raju was recorded being from the Founder Family in the Endowment Register maintained under Section 38 of Act 17 of 1966 (which register is otherwise known as Property Register) in Column No.4. Such an entry was made on 28.05.1982.

58. Sri late Ananda Gajapathi Raju applied for declaration and confirmation as member from the founder's family. In the proceedings of the Assistant Commissioner, Endowments Department,

Visakhapatnam, in Rc.No.A1/2439/96-1/Adm., dated: 03.05.1996, he was so confirmed. It is important to note that the declaration and confirmation of Sri late P.V.G.Raju and Sri late Ananda Gajapathi Raju, were as per usage and custom and also considering that their ancestors were in management of this temple since times immemorial.

59. Similarly in respect of MANSAS Trust, entries in the Register of Endowments under Section 38 of A.P.Act 17 of 1966 were made. Column No.4 of such entries with reference to the name of the founder - Sri late P.V.G.Raju, Raja Saheb of Vizianagaram is stated. With reference to succession to the office of the hereditary trustee, it is stated in the same Column No.4, being the Raja Saheb of Vizianagaram and after him, the eldest male descendant of the family who shall be the President of the Society.

60. MANSAS being a society registered under Societies Registration Act in its memorandum of association stated in Clause 6(1)(a) and (b) as follows:

> "6. The Council of the Society to whom by the Rules of the Society the Management of its affairs is entrusted shall consist of the following class of persons:-
>
> (i)(a) Raja of Vizianagaram and his sons on their attaining majority. Till the sons attain majority the Raja may nominate one person each to represent them in the Council Sri P.Madhava Varma and Sri K.V.S.Padmanabharaju, M.L.A. will represent the eldest and second son respectively for the first term of three years.
>
> (b) Two other members from the family of the Raja of Vizianagaram who may be nominated by the Raja.
>
> They are:- (1) Padmabhushan Dr.Sri Vijayananda Gajapathi Raj, Maharajkumar of Vizianagaram.

(2) to be nominated later."

61. Thus, this clause stated position of Sri late Ananda Gajapathi Raju and also the petitioner, who were then minors and who were represented by others, in the class of persons to manage the affairs of this society through its council.

62. The rules of the society in II(a) state as under:

> "The Raja Saheb of Vizianagaram and after him the eldest leneal male descendant of the family shall be the President of the Society."

63. The same is reflected in Column 4 of the Register of Endowments referred to above.

64. The first respondent did not dispute any of these facts. In the counter affidavit of the first respondent, there is also a reference of the nature of MANSAS being a society under Societies Registration Act, its memorandum of association and the rules governing the management of the society.

65. In the counter affidavit of the first respondent, it is stated that Sri P.V.G.Raju as founder of MANSAS requested the Government for exemption of the same under Section 108 of A.P.Act 17 of 1966 and unconditionally and to formerly register the society under Section 38 of the said Act by his application dated 13.06.1972. Thereupon, considering the proposal there for from the office of the second respondent dated 03.08.1972, upon hearing the persons having interest and upon due verification of the facts stated, duly considering such request, a certificate was issued under Section 38 of A.P.Act 17 of 1966

through the office of the Assistant Commissioner, Endowments Department, Anakapalli.

66. The Register of Endowments also mentions in Col.7, filing a printed copy of Trust Deed dated 12.11.1958 showing the details of the property endowed to the society and Col.3 of the same entry states that the society was founded on 12.11.1958 and that the society was registered under Act 21 of 1860 on 12.11.1958. This column further refers to filing a printed booklet containing objects, nature and particulars regarding the beneficiaries.

67. Thus, the records of the Endowment Department reflected this situation of MANSAS. A deed styled 'Deed of Trust' dated 18.11.1958 giving away vast extents of properties was executed by Sri late P.V.G.Raju to perpetuate his father Maharaja Sri Alak Narayan Gajapathi Raju, appointing as the trustee. The trustee has to manage its affairs including the properties in the manner stated not only in the Deed of Trust but also the Memorandum of Association as well as the Rules framed for such purpose.

68. On behalf of the 4th respondent, reliance is placed on ***Teki Venkata Ratnam and others vs. Deputy Commissioner, Endowment and others***[1] in respect of overriding effect of Section 160 of Act 30 of 1987 and to apply to the contents of Register of endowments under Section 38 of Act 17 of 1966 of MANSAS and the temple.

69. But, in terms of Section 155(2)(a) of A.P.Act 30 of 1987, the certificates issued in respect of both these institutions under Section 38

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[1] 2001(7) SCC, 106

of Act 17 of 1966 shall be deemed to have been issued under the present Act 30 of 1987 and that they shall have the same effect until they are modified, cancelled or superceded under the provisions of the said Act. There is no material to hold that these entries are modified or cancelled or superceded.

70. It is the contention of the petitioner that as per custom and usage and as per law, he being the elder surviving male descendant in the family in the agnatic line of succession shall be the trustee excluding others, of Sri Varaha Lakshmi Narasimha Swamyvari temple at Simhachalam, Visakhapatnam District. It is also his contention that the same old established custom was followed earlier during lifetime of Sri late Ananda Gajapathi Raju, not to speak of their father Sri late P.V.G.Raju. On such score, it is also the contention of the petitioner that G.O.Ms.No.123 Revenue (Endts.II) Department dated 31.03.2016 was issued recognizing him as Founder Family Member under Section 17 of Act 30 of 1987 and when he was appointed as the Chairman of the Temple Trust Board at Simhachalam.

71. Similarly, the petitioner contended that by virtue of Clause II(a) of the Rules of MANSAS reflected in the entry in the Register of Endowments, after demise of Sri Ananda Gajapathi Raju, he being the eldest lineal male descendant of the family became the President of the MANSAS.

72. One of the contentions of the respondents 1 to 5 is that in view of Section 16 of A.P.Act 30 of 1987, there is abolition of hereditary trustees and therefore, the contention of the petitioner that he being a lineal descendant of the founder family and thus entitled to such status in respect of these institutions, cannot stand.

73. Abolition of hereditary trustees under Section 16 of A.P.Act 30 of 1987 is not in issue in these matters and this situation is admitted. This question was considered in ***PANNALAL BANSILAL PITTI AND OTHERS v. STATE OF A.P. AND ANOTHER***[2]. In para 22 of this ruling in this context it is stated as under:

> "Section 16 with a non obstante clause abolishes the hereditary right in trusteeship of charitable and Hindu religious institutions or endowments. It is settled law that the legislature within its competence may amend the law. The language in Section 16 seeks to alter the pre-existing operation of the law. The alteration in language may be the result of many factors. It is settled legislative device to employ non obstante clause to suitably alter the pre-existing law consistent with the legislative policy under the new Act to provide the remedy for the mischief the legislature felt most acute. Section 16, therefore, applying non obstante clause, altered the operation of any compromise, agreement entered into or a scheme framed or a judgment, decree or order passed by any court, tribunal or other authority or any deed or other document prior to the Act. The pre-existing hereditary right in trusteeship in the office of the hereditary trustee, mutawalli, dharmakarta or muntazim or by whatever name it is called was abolished prospectively from the date of the commencement of the Act. Article 15(1) of the Constitution prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

74. This ruling is relied on by all the parties in this batch of writ petitions. However, in the context of circumstances on record particularly with reference to status of late Sri P.V.G.Raju and Sri late Ananda Gajapathi Raju, which remained undisputed in relation to these two institutions, it is obvious and manifest that this bar under Section 16 of A.P.Act 30 of 1987 did not come into play. Either usage or custom by

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[2] 1996(2) SCC 498

which they were accepted, confirmed, declared, identified and recognised as such and as founder/Member of the Founder Family, remained the basic premise in conferring such position and status to them.

75. The petitioner was similarly declared as Member of Founder Family under G.O.Ms.No.123, Rev.(Endts.II) Dept., dated 31.03.2016 of the temple at Simhachalam and by G.O.Ms.No.138, Rev.(Endts.II) Dept., dated 07.04.2016 in respect of MANSAS.

76. It was upon application of Section 17 of A.P.Act 30 of 1987, the State through its Principal Secretary to the Government (the first respondent) had issued the afore stated G.Os., conferring such status and position to the petitioner in relation to these two institutions.

77. It is desirable to refer to Section 17(1) of A.P.Act 30 of 1987 hereunder:

> "Procedure for making appointments of trustees and their term:-(1) In making the appointment of trustees under Section 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) in respect of Institution or Endowments existing at the commencement of this Act, the person who was recognised as Hereditary Trustee under the Andhra Pradesh Charitable and Hindu

Religious Institutions and Endowments Act, 1966 or a Member of his family recognised by the Competent Authority.

(b) In respect of an Institution or Endowment established after such commencement, the person who has founded such Institution or Endowment or a member of his family and recognised as such by the competent authority.

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 recognised 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 recognised as founder trustees by any means.]"

78. Section 15 of this Act refers to appointment of Board of trustees in respect of charitable or religious institutions or endowments based on classification of these institutions under Section 6 of this Act. Both these institutions are classified under Section 6(a)(i) and therefore the appointment of trusteeship is under Section 15(1) of this Act. In terms of Section 8 of this Act, powers are conferred on the Commissioner of Endowments and other authorities enlisted there in, of superintendence and control including power to pass any order which is necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purpose for which they are found or exist.

79. Section 13 of this Act requires Commissioner and other authorities there under to observe appropriate form, usages and practices. It also mandates that these authorities shall not interfere with and shall observe the forms, usages, ceremonies and practices obtaining in and

appropriate to these institutions in respect of which they were conferred such powers to exercise.

80. Referring to these provisions in A.P. Act 30 of 1987, it is the contention of Sri D.V.Seetha Rama Murthy, learned senior counsel for the petitioner that though hereditary right is abolished under Section 16, it is brought back in Act 30 of 1987 under the lable of founder or member of his family and that the only requirement being the appointment in terms of Section 17 of this Act, by recognizing him by the competent authority while the family and the lineage remains the same. It is further contention of learned Senior Counsel Sri D.V.Seetha Rama Murthy, that the combined reading of Section 8 and Section 13 of this Act makes out in absolute terms observance of all such usages, practices etc., without any breach including application of income derived there from for the purposes for which they are founded or in existence.

81. While emphasizing the requirement to follow the wishes of the founder, stated in Section 17(1) of the Act, relying the observations in *Pannalal Bansilal Pitti and others V. State of A.P. and others,* referred to above, further reliance is placed by learned senior counsel in ***NALAM RAMALINGAYYA HEREDITARY TRUSTEE OF NALAM CHOULTRY, RAJAHMUNDRY AND OTHERS v. THE COMMISSIONER OF CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS, HYDERABAD AND OTHERS***[3]**,** where at page 457, it is stated as under:

> "The State is certainly entitled to make a law regulating the management of the secular estate of a religious denomination within the meaning of Arts 25 as well as of

[3] (1970)2 APLJ 422

religious or charitable institutions or endowments in order to ensure more efficient administration of the funds and properties of the institution and endowments. This it has to do in the interests of the community or of the general public. The Act in question is such a law. The said law is intended to sub-serve and advance the objects and purposes of the institution. **The wishes of the founder or usage or customs have to be of necessity honoured and given effect to.** The functionaries under the Act are not empowered to act in a manner inconsistent with the said objects. They have power to give instructions but only for ensuring proper administration of the religious institution or endowment in accordance with law governing such institutions."

82. In Pannalal Bansilal Pitti Vs. State of A.P., further observations relied on for the petitioner in this context are in Paras 25 to 27:

"25. But immediate question is whether taking away of the management and vesting the same in the board of non-hereditary trustees, constituted under Section 15, is valid in law. It is seen that the perennial and perpetual source to establish or create any religious or charitable institution or endowment of a specific endowment is the charitable disposition of a pious person or other benevolent motivating factors, but to the benefit of indeterminate number of people having common religious faith and belief which the founder espouses. Even a desire to perpetuate the memory of a philanthropist or a pious person or a member of the family or founder himself may be the motive to establish a religious or charitable institution or endowment or specific endowment. Total deprivation of its establishment and registration and take over of such bodies by the State would dry up such sources or acts of pious or charitable disposition and act as disincentive to the common detriment.

26. Hindus are majority in population and Hinduism is a major religion. While Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Therefore, protection under Articles 25 and 26 is available to the people professing Hindu religion, subject to the law therein. The right to establish a religious and charitable

institution is a part of religious belief or faith and, though law made under clause (2) of Article 25 may impose restrictions on the exercise of that right, the right to administer and maintain such institution cannot altogether be taken away and vested in other party; more particularly, in the officers of a secular Government. The administration of religious institution or endowment or specific endowment being a secular activity, it is not an essential part of religion and, therefore, the legislature is competent to enact law, as in Part III of the Act, regulating the administration and governance of the religious or charitable institutions or endowment. They are not part of religious practices or customs. The State does not directly undertake their administration and expend any public money for maintenance and governance thereof. Law regulates appropriately for efficient management or administration or governance of charitable and Hindu religious institutions or endowments or specific endowments, through its officers or officers appointed under the Act.

27. The question then is whether legislative declaration of the need for maintenance, administration and governance of all charitable and Hindu religious institutions or endowments or specific endowments and taking over the same and vesting the management in a trustee or board of trustees is valid in law. It is true, as rightly contended by Shri P.P. Rao, that the legislature acting on the material collected by Justice Challa Kondaiah Commission amended and repealed the predecessor Act 1966 and brought the Act on statute. Section 17 of the predecessor Act of 1966 had given power to a hereditary trustee to be the chairman of the board of non-hereditary trustees. Though abolition of hereditary right in trusteeship under Section 16 has already been upheld, the charitable and religious institution or endowment owes its existence to the founder or members of the family who would resultantly evince greater and keener responsibility and interest in its proper and efficient management and governance. The autonomy in this behalf is an assurance to achieve due fulfillment of the objective with which it was founded unless, in due course, foul in its management is proved. Therefore, so long as it is properly and efficiently managed, he is entitled to due freedom of management in terms of the deed of endowment or established practice or usage. In case a board of trustees is

> constituted, the right to preside over the board given to the founder or any member of his family would generate feelings to actively participate, not only as a true representative of the source, but the same would also generate greater influence in proper and efficient management of the charitable or religious institution or endowment. Equally, it enables him to persuade other members to follow the principles, practices, tenets, customs and sampradayams of the founder of the charitable or religious institution or endowment or specific endowment. Mere membership along with others, many a times, may diminish the personality of the member of the family. Even in case some funds are needed for repairs, improvement, expansion etc., the board headed by the founder or his family member may raise funds from the public to do the needful, while the executive officer, being a government servant, would be handicapped or in some cases may not even show interest or inclination in that behalf. With a view, therefore, to effectuate the object of the religious or charitable institution or endowment or specific endowment and to encourage establishment of such institutions in future, making the founder or in his absence a member of his family to be a chairperson and to accord him major say in the management and governance would be salutary and effective. The founder or a member of his family would, thereby, enable to effectuate the proper, efficient and effective management and governance of charitable or religious institution or endowment or specific endowment thereof in future. It would add incentive to establish similar institutions."

83. These observations also referred to freedom to manage these institutions upon abolition of hereditary right in trusteeship under Section 16 of this Act taking a pragmatic view of administering and managing either religious charitable or endowment institutions. The institutions concerned to these cases are undisputedly of such nature.

84. Learned Additional Advocate General strenuously contended seriously disputing the claim of the petitioner and to claim himself being 'aggrieved' to file these writ petitions. Reliance is placed by learned

Additional Advocate General in this context upon ***BABUA RAM AND OTHERS v. STATE OF U.P. AND ANOTHER***[4] of the Hon'ble Apex Court in Paras 18 and 23, which are as under:

> "18. In Collins English Dictionary, the word "aggrieved" has been defined to mean "to ensure unjustly especially by infringing a person's legal rights". In Webster Comprehensive Dictionary, International Edition at page 28, aggrieved person is defined to mean "subjected to ill-treatment, feeling an injury or injustice. Injured, as by legal decision adversely infringing upon one's rights". In Strouds Judicial Dictionary, Fifth Ed., Vol. 1, pages 83-84, person aggrieved means "person injured or damaged in a legal sense". In Black's Law Dictionary, Sixth Ed. at page 65, aggrieved has been defined to mean "having suffered loss or injury; damnified; injured", aggrieved person has been defined to mean "One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word "aggrieved" refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation."
>
> 23. Now we consider the external aid to get at the crux of the question. When the language is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. Such language best declares, without more, the intention of the legislature and is decisive on it. Therefore, when the language is clear and capable of only one meaning, anything enacted by the legislature, must be enforced, even though it be absurd or result in startling consequences. The endeavour, therefore, must be to collect the meaning of the statute from the expressions used therein rather than from any notions which may be entertained by the court as to what is just or expedient. When two interpretations are possible, the task of the court would be to find which one or the other interpretation would promote the object of the statute, serves its purpose, preserve its smooth working and prefer the one which subserves or

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[4] 1995(2) SCC 689

promotes the object to the other which introduces inconvenience or uncertainty in the working of its system."

85. Further contention of the learned Additional Advocate General is Explanation II of Section 17(1)(b) of Act 30 of 1987 cannot be stretched to the extent of depending on the wishes of the founder, since it did not bear any relevance and that wishes of the founder can be taken into consideration only for appointment under Section 15(1) of this Act and not for getting recognition as founder family member, having regard to types of trustees, institution of this nature will have. Thus, it is contended that the contention of the petitioner is misconceived.

86. Sri Vedula Venkata Ramana, learned senior counsel for the fourth respondent contended that the petitioner has no semblance of right much less eligibility to get into the office of Chairman/President of both these institutions as per line of succession since he being only the second son of Sri late P.V.G.Raju. Learned senior counsel further contended that neither Sri late Ananda Gajapathi Raju nor the petitioner has male issues and that they have daughters and in such circumstances, Rule II(a) of the rules of MANSAS as well as the entry in the Register of Endowments under Section 38 of Act 17 of 1966 should be interpreted taking a practical outlook. It is further contended by learned Senior Counsel that the requirement as per the above entries so far as MANSAS is elder lineal male descendant and hence, the petitioner can never have such status or *locus standi* to file these writ petitions.

87. In support of this contention, learned Senior Counsel placed reliance in ***RAFIQUE BIBI (DEAD) BY LRs. V. SAYED WALIUDDIN (DEAD)***

BY LRs. AND OTHERS[5]. The contention of learned Senior Counsel in this context is that only a right person should approach a right forum of law/Court in a right proceeding and that the petitioner is not a right person to challenge the impugned G.Os. In para 7 of this ruling, it is stated as under:

> "7. Two things must be clearly borne in mind. Firstly, "the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be 'a nullity' and 'void' but these terms have no absolute sense; their meaning is relative, depending upon the Court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results." (Administrative Law, 8th Edition, 2000, Wade and Forsyth, p. 308). Secondly, there is a distinction between mere administrative orders and the decrees of Courts, especially a superior Court. "The order of a superior Court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of Court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time limit."

88. The petitioner intends to reinforce his stand basing on the custom and usage in respect of the trusteeship and being the Chairman of the Board of the Temple at Simhachalam and the wishes of the founder manifested from the entries in the Register of Endowments under Section 38 of Act 17 of 1966 in respect of MANSAS being an eldest lineal male descendant of the family, surviving. Founder member denoted in Section 17 of the Act 30 of 1987 and his wishes, are not without purpose. They predicate the course to follow in appointing the trustees. The

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[5] (2004) 1 SCC 287

authorities under this Act can ill-afford to ignore them, for all purposes including under Section 15 or Section 17 of this Act. Nor it can be considered only for such purpose, as sought to be contended by learned Additional Advocate General. In ***Pannalal Bansilal Pitti***, the position of a founder is made clear. Hence, the contention of learned Additional Advocate General cannot be accepted.

89. Proviso to Section 17(1) of this Act requires the founder or one of the members of the family of the founder if qualified, be appointed as one of the trustees. Similarly, explanation – II to Section 17(1)(b) of this Act, indicates who shall be the member of the family of the founder. Surviving senior most male member in the family is the petitioner.

90. Explaining the situation of the petitioner as the surviving eldest male descendant in the Family of the Founder Member of Sri late P.V.G.Raju, Sri D.V.Seetha Rama Murthy, learned Senior Counsel referred to dictionary meaning of 'eldest' as per the New Shorter Oxford English Dictionary on Historic Principles, Clarendon Press: Oxford, 1993, Volume-1, 4th Edition, at Page 793 is *First Born, Oldest surviving*. Thus, it is contended that it included eldest surviving male.

91. In this respect, further reliance is placed in ***Kuppu Ramalingam Chettiar V. Ranganathan Chettiar and Others***[6]. It was a case, where the terms of the Trust Deed though provided for a continuous lineage for managing its affairs, contentions were advanced as if the founder made a provision only for his immediate successor. In that context in Para – 5 of this ruling of Madras High Court, it is stated thus:

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[6] AIR 1974 Mad, 27

> "……From the expressions it is clear that the founder contemplated the trustee who would not only immediately succeed him but also all succeeding trustees, all being his heirs. It could not have been the intention of the founder that the trust should be managed by somebody other than a member of his family after the lifetime of his immediate successor."

92. Admitted situation by 03.03.2020 when the impugned G.Os. were issued was that the petitioner held these positions, being recognized as member of the founder family. It is to be noted that such recognition or declaration was never questioned by anyone, including in the present writ petitions. Though contentions are advanced on behalf of the 4th respondent that such recognition or declaration by virtue of the G.Os. issued by the first respondent then are illegal, they cannot be looked into. It was never the case of any of the official respondents or the 4th respondent that the G.Os. so issued are illegal nor clothe or bestow such positions to the petitioner. Nor their counter affidavit pleads to that effect. With their being a pleading, no contention can be permitted to be advanced.

93. On behalf of the petitioner, ***Marthanda Varma (Dead) Through L.Rs. and another vs. State of Kerala and others***[7] is relied on in support of the contention as to application of custom or usage and when recognized by the State, of Shebaitship. It is a case relating to management and administration of Sri Anantha Padmanabha Swamy Temple, Tiruvanantapuram by the erstwhile princely family of Travancore-Cochin State. In the given facts and circumstances, having regard to the accession of this State to Union of India under Article 362

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[7] 2021(1) SCC 225

of the Constitution of India, the terms entered thereupon and in application of provisions of Travancore Cochin Religious Institutions Act of 1956, observations are recorded.

94. On conspectus, it is clear that the petitioner not only a lineal male descendant of the family of the founder as per custom and usage but also being a member of the family of the founder as described in Explanation II of Section 17(1)(b) is qualified to be appointed as trustee of these institutions and thus was declared and recognized.

95. Thus, on a careful consideration of the entire material, it is established that the petitioner is right in approaching by way of these writ petitions under Article 226 of Constitution of India having such status and capacity in relation to both these institutions to question the impugned G.Os. and being aggrieved. As the Chairman/President of both these institutions on the date of the impugned G.Os. admittedly, he is entitled to do so. Thus, this point is answered in favour of the petitioner and against the respondents.

96. **POINT No.2:** There are two sets of G.Os. in these matters. One set is in relation to recognizing the respondents 4 to 6 as the members of the family of the founder. G.O.Ms.No.71 Revenue (Endts.II) Department, dated 03.03.2020 is issued recognizing them in relation to the temple trust at Simhachalam. G.O.Ms.No.73 Revenue (Endts.II) Department, dated 03.03.2020 is issued recognizing them as members of the family of the founder of MANSAS.

97. Another set is covered by G.O.Ms.No.72 Revenue (Endts.II) Department, dated 03.03.2020 and G.O.Ms.No.74 Revenue (Endts.II) Department, dated 03.03.2020 appointing the 4th respondent as the

Chairman cum hereditary trustee of the temple at Simhachalam and Chairman of MANSAS Trust respectively.

98. One of the reasons assigned in common in all these G.Os., is application of Section '6(a)' of Hindu Succession Act as amended in the year 2005 recognizing the daughter as a co-parcener on par with the sons. Thus, on account of it, it is stated that there is no bar to consider the request of the respondents 4 to 6 on their respective applications for being appointed as members of the family of the founder. These G.Os. reflect that their specific request was to appoint as Chairman/hereditary Trustee of both these institutions.

99. In the course of hearing, Sri Vedula Venkata Ramana, learned senior counsel for the 4th respondent felt certain difficulty to support this reason. However, in the written submissions filed on her behalf an effort is made to support this reason relying on ***VINEETA SHARMA v. RAKESH SHARMA AND OTHERS***[8].

100. Sri D.V.Seetha Rama Murthy, learned Senior Counsel for the petitioner seriously assailed in referring Section 6(1)(a) of Hindu Succession Act, in these G.Os., mainly on the ground that such reason is devoid of substance. It is further contended that in as much as Section 29-A was introduced by an amendment to The Hindu Succession Act, by Act 39 of 1986 which came into force with effect from 05.09.1985 in the State of A.P., where under daughters are given equal right like sons in the co-parcenery property. Thus, it is contended that reference to Section 6(i)(a) is redundant.

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[8] (2020) 9 SCC 1

101. Sri P.Rajasekhar, learned counsel for the 5th respondent supported such reason contending that the office for which this appointment is sought is in the nature of property. Support is sought to be drawn in this context from the observations of the Hon'ble Supreme Court in ***RAJ KALI KUER v. RAM RATTAN PANDEY***[9].

102. As rightly pointed out for the petitioner, there was an amendment to The Hindu Succession Act applicable to State of A.P. under Section 29-A whereby daughters are treated as coparceners along with the sons. It was in vogue by the date Sri late P.Anand Gajapathi Raju was appointed as Chairman cum Trustee of Simhachalam temple and the Chairman of MANSAS Trust. It was also in vogue when the petitioner similarly held these positions. Never there was any objection nor this reason was considered, with a view to facilitate women members of the family for these positions.

103. Invocation of Section 6(1)(a) of Hindu Succession Act gives an impression as if the authorities under this Act 30 of 1987 have treated these posts of Chairman/Trustee and the Chairman of both these institutions being the co-parcenery property of erstwhile Pusapati family of Vizianagaram. It in fact runs counter to the contention of the respondents that hereditary nature of the office of trustee is affected by Section 16 of Act 30 of 1987, since abolished. When it being the situation, it is rather surprising, how the authorities under this Act referred to this reason. In the counter in W.P.No.9895 of 2020 of the first respondent, an attempt is made to explain invocation of this provision of The Hindu Succession Act, as if to indicate the policy of the

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[9] AIR 1955 SC 493

State. Learned Additional Advocate General also referred to it. Policy of the State can be expressed by different means and adopting different modalities. Certainly it cannot be reflected or demonstrated by a shaky reason of this nature, which is not on firm ground.

104. Thus, the contentions for the respondents in support of this reason shall stand rejected.

105. The respondents 4 to 6, as per these G.O.Ms.Nos.71 and 73 Revenue (Endts.II) Department dated 03.03.2020 are recognised as members of the founder family under Section 17 of Act 30 of 1987. When the petitioner was very much recognised and declared as founder family member, in terms of Section 17 of this Act by the date of these G.Os., there was no possibility to consider the recognition of the respondents 4 to 6 as founder family members.

106. In terms of Section 17 of this Act, appointment of a trustee from the family of the founder when considered along with Section 15 of this Act, arises only when there is a vacancy of trusteeship. In terms of explanation II to Section 17(1)(b) of this Act, the consideration should be based on order of preference or order of priority. In the sense, this explanation II when speaks of children, followed by grandchildren in agnatic line of succession for time being in force, children should be given precedence and preference than the grandchildren. Children in the context of the present matters, of Sri late P.V.G.Raju are stated in para 7 above. Therefore, when the petitioner is next in the line being the second son of Sri late P.V.G.Raju, he should be accorded preference, which was done when he was recognised and declared as founder family member by the first respondent. This is another reason to favour him, along with the reasons stated, while considering point No.1 supra.

Plurality for this purpose to recognise and declare as members of the family of the founder is not the requirement, since the necessity to appoint a trustee arises only when a vacancy arises and it shall be in the circumstances stated in Section 22 of this Act.

107. Section 22 of this Act considers vacancy in the office of trustee and filling of such vacancy. The vacancy is contemplated on account of disqualification specified in terms of Section 19 or removal under Section 28 or upon resignation by the existing trustee or by efflux of time or otherwise.

108. In this context, on behalf of the petitioners, Sri D.V.Seetha Rama Murthy, learned Senior Counsel placed reliance in Kum.***SHASHIKALA AND OTHERS v. SMT.BABITA SHARMA AND OTHERS***[10]. Sri P.Rajasekhar, learned counsel on behalf of the 5th respondent also relied on this ruling. In para 33(a), it is stated in this respect upon referring the effect of various provisions of Act 30 of 1987 particularly of Chapter III, as under:

> "33(a)……In fact, from the wording of the amended Explanation II to Section 17(1) of the Act "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. The line of succession above referred arises only after the death of the person for claim by his agnatic lineal descendents as Members of Founder's Family. The line of succession provided by the Act is only in agnatic line which is running contrary to the general rules of succession covered by the Hindu Succession Act and other personal statutory laws."……

[10] 2018(4) ALT 161

109. Thus, recognition of the respondents 4 to 6 as founder family members is bad for such reason, since there was no occasion to consider their recognition for the authorities under the Act 30 of 1987.

110. Further, the authorities are required to follow the procedure in appointing the trustee. When the respondents 4 to 6 applied, the required procedure was not followed. The procedure contemplated is stated in Section 17(3) of Act 30 of 1987. It requires calling for applications for appointment of trustees when sought to be appointed under Section 15 of this Act and verification of their antecedents. The members of family of the founder shall follow the same procedure and that they do not stand to an exception. Since recognition as member of family of founder is a prerequisite for them to be appointed as a trustee, necessarily they should apply following the procedure. There are rules prescribed for this purpose in 'A.P.Charitable and Hindu Religious Institutions and Endowments Appointment of Trustee Rules, 1987'.

111. The procedure relating to appointment of a trustee of non-hereditary trustee board is discussed by one of the learned Judges of this Court in detail in ***ANDAL RAGHAVAN v. DEPUTY COMMISSIONER, ENDOWMENTS DEPARTMENT***[11] in para -9 and it reads thus:

> "9. The law provides as to how the right to be appointed as a trustee of non-hereditary trust Board, is to be claimed or enforced. Section 2(19) of the Act defines the term 'prescribed' means prescribed by the Rules made by the Government under the Act. The proviso to subsection (1) of Section 17 of the Act is to the effect that founder or member of the founder's family shall be appointed as one of the trustees as prescribed. Be it noted when once in exercise of the Rule making power the

[11] 2007(4) ALT 509

Government makes delegated legislation the same forms part of the main statute. Hence the right of the member of the family of the hereditary trustee for being appointed as a trustee is a statutory right enforceable only in accordance with the Act and the Rules. The Rules were promulgated by the Government in exercise of their powers under Section 153 read with Section 17(3) of the Act, which as noticed above, lays down that the procedure for calling for applications for appointment of trustees, verification of antecedents and other matters shall be as may be prescribed. There are eight Rules dealing with the appointment of trustees. Rules 3 to 5 contemplate the issue of notice in Form No.I inviting applications from qualified persons for being appointed as trustees of the trust Board of a religious institution. Rules 6 and 7 deal with verification of the antecedents of the applicants and scrutiny of applications along with the report of the officer verifying the antecedents. Rule 8 lays down that the competent authority shall have due regard to the qualifications and disqualifications for trusteeship laid down under the Act. It also contains guidelines to be followed by the competent authority in selecting the trustees from among the applicants. The selectee must be service minded, capable of devoting sufficient time to the affairs of the institution, have interest and faith in the institution, and normally a resident of the locality enjoying the respect and esteem in the area. The order of appointment shall be in Form No.III. Be it also noted that Section 18 of the Act prescribes qualifications for trusteeship and Section 19 of the Act enumerates disqualifications for trusteeship. Keeping this in view while making application in Form No.2 as per Rule 5(1) of the Rules, every applicant has to make a declaration that he is qualified under Section 18 and not disqualified under Section 19 of the Act. In Form No.II, every applicant is required to fill up a column, which reads: “other relevant particulars if any which the applicant desires to bring to the notice of the appointing authority”.

112. In para 10 of this ruling, it is further stated as under:

“10…….

> Every founder or member of the founder's family cannot be said to have an enforceable right for being appointed as a trustee or chairman of trust Board. As a matter of course, such person has to fulfil the qualifications in Section 18 of the Act and Rule 8 of the Rules and should not incur disqualification under Section 19 of the Act. Further even in a case where the number of applications received by the competent authority is equal to the number of trustees to be appointed, even then no application can be said to have any right for appointment. The antecedents of all the applicants got to be verified by the subordinate officers and the verification report has a bearing on the exercise of the power by the competent authority. Therefore unless and until the application is made by the person claiming to be founder or member of the founder's family giving all the details in Form No.II and unless and until the antecedents of such person are verified by the verification officer, such person cannot be appointed as a trustee. Rule 7 of the Rules clearly lays down that, "competent authority shall scrutinize the applications along with the report of the verifying officer and pass orders appointing trustees''. Therefore the submission of the learned Counsel for the petitioner that there is no necessity for the founder or member of the founder's family to apply in Form No.II under Rule 5(1) of the Rules, after publication of notice in Form No.I, cannot be countenanced. If the same is accepted and a member of the founder's family is appointed without there being an application, it would lead to number of complications besides showing up problems and difficulties in a case where there are more than one recognised member from the founder's family."

113. It is correct enunciation of law in this respect. This ruling is applied in ***Kum.Sashikala and Others***, referred to above, with approval. ***G.Rajendranadh Goud Vs. State of A.P.***[12] is referred in this decision.

114. When the law prescribes the procedure thus to follow, it is manifest, from all the impugned G.Os. that there is a serious breach

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[12] 2006(1) ALD 705

committed by the authorities under this Act, of the same. Though in the counter affidavit of the first respondent in W.P.No.9895 of 2020, it is stated more than once that due procedure was followed in this exercise, it is not either seen or reflected. Thus, there is serious infraction of procedure of the provisions of Act 30 of 1987 in considering the claims of the respondents 4 to 6, when they sought to be appointed as Chairman or hereditary trustee.

115. In this context, background of the claims for these parties assumed any amount of importance. In reply affidavit to the counter of the first respondent in W.P.No.9895 of 2020, there are serious averments questioning the antecedents of the 4th respondent particularly stating that she is not prone to adhere to the tenets of Hinduism and that she has a leaning to another religion. Nonetheless, these allegations, need not be considered in these matters since they are not substantiated.

116. As seen from G.O.Ms.No.74 Revenue (Endts.II) Department dated 03.03.2020, it is stated that the petitioner was continuing as a Chairman of MANSAS till then and the Board constituted by virtue of orders in G.O.Ms.No.139 Revenue (Endts.II) Department, dated 07.07.2016 and G.O.Ms.No.155 Revenue (Endts.II) Department, dated 27.12.2017 has been running for a long time. It is further stated in the G.Os. that the request of the 4th respondent since recognised as member of the family of the founder of this Trust by virtue of G.O.Ms.No.73 Revenue (Endts.II) Department, dated 03.03.2020 is considered to appoint as Chairman of this trust on rotation basis.

117. Similarly, in G.O.Ms.No.72 Revenue (Endts.II) Department, dated 03.03.2020, it is stated that there is no prohibition with reference to

line of succession or entitlement of the members of such family either on the basis of agenda or the line of succession, viz., agnatic or cognatic. It is also stated in this G.O. that there is no prohibition to consider the representation of the individuals. It is further stated in this G.O. that since the 4th respondent was recognised by G.O.Ms.No.71 Revenue (Endts.II) Department, dated 03.03.2020 as founder family member of the temple Trust Board at Simhachalam, she is entitled to hold the post of Chairman of this temple. Again it is stated in this G.O. that since the petitioner has been continuing as the Chairman of this Board of Trustees of this temple for a long time, the Government appointed the 4th respondent as the Chairman/hereditary trustee of this Temple Trust Board on rotation basis.

118. The Government under this Act 30 of 1987 sought to appoint the 4th respondent as the Chairman/Trustee of the temple Trust Board at Simhachalam and as the Chairman of MANSAS on rotation basis. Considering this appointment on rotation basis is a serious folly. In the sense, neither Section 15 nor Section 17 nor Section 20 of Act 30 of 1987 consider such appointment on rotation basis. In terms of Section 20(1)(b) of this Act, whenever the founder or member of the family of the founder is appointed as trustee, he shall be the Chairman of Board of Trustees.

119. Both these G.Os. viz. G.O.Ms.No.72 Revenue (Endts.II) Department, dated 03.03.2020 and G.O.Ms.No.74 Revenue (Endts.II) Department, dated 03.03.2020 did not specify any reason for replacing the petitioner by the 4th respondent. Only reason stated, if at all it is to consider is that he has been in such position for long. By no means it is

a reason by which he can be removed or replaced by another in terms of Section 22 of this Act.

120. Efflux of time or the periodicity of the Trust Board, in terms of either Section 17 of this Act or its Chairman in terms of Section 20 is not applicable in case of member of founder family who is appointed as a trustee, in view of proviso to Section 19(1)(k) of this Act. Section 19 deals with disqualifications for trusteeship and one of such disqualifications is that a person appointed as a trustee shall not hold the office for two consecutive terms. However, the proviso to it clarifies that nothing in this clause shall apply to founder or a member of the family of the founder, who has been appointed as a trustee.

121. Therefore, the duration or periodicity of these positions held by the petitioner cannot be a reason for his removal or replacement there from as is directed in the impugned G.O.Ms.No.72 Revenue (Endts.II) Department, dated 03.03.2020 and G.O.Ms.No.74 Revenue (Endts.II) Department, dated 03.03.2020.

122. The 4th respondent was appointed as one of the trustees vide G.O.Rt.No.252 Revenue (Endts.II) Department dated 20.02.2020 along with 15 others. Recognised founder family member is the Chairman of this Trust Board as per this G.O.Rt.No.252. By the date of this G.O., viz. 20.02.2020, the petitioner was the Chairman of this Trust Board. This G.O. was also implemented and date was fixed for oath taking ceremony to 29.02.2020. The petitioner was invited for this purpose by the letter of then Executive Officer of this temple dated 25.02.2020(this letter is a part of material paper filed in W.P.No.6857 of 2020). However, within 13 days, G.O.Ms.No.71 Revenue (Endts.II) Department, and G.O.Ms.No.72 Revenue (Endts.II) Department were issued i.e. on

03.03.2020. Neither it is stated in G.O.Ms.No.72 nor in any of the counter affidavits filed in the Writ Petitions No.9895 of 2020 and 6857 of 2020 by the first respondent or the third respondent explaining the reason for this change or alteration and for replacing the petitioner. G.O.Ms.No.72 Revenue (Endts.II) Department, dated 03.03.2020 merely referred to issuance of G.O.Rt.No.252 in para – 4 and no reason is assigned as to supercession of the same.

123. The reason of 'rotation' is not supported by any of the provisions in Chapter III of Act 30 of 1987. This practice of rotation finds place in Section 17(2)(b) of A.P.Act 17 of 1966. This provision is not continuing in A.P.Act 30 of 1987, and is omitted. Therefore, referring to rotation in these G.Os. to hold this position is not sanctioned by A.P.Act 30 of 1987. A provision, which is omitted in the present Act, viz. Act 30 of 1987 is sought to be invoked in these G.Os. it again reflects upon the improper exercise of the authority under this Act. What is not provided under the Act is sought to be brought in. This is another procedural anomaly in these two G.Os., which goes to the root of the matter affecting their tenability.

124. Added to it, the basis for such assumption by the Government in appointing the 4th respondent on rotation basis is neither clarified nor explained. Nor the terms of such rotation is specified. Neither these instances are explained in these G.Os. or in the counter affidavits of the first respondent. Further, when all these G.Os. are issued basing on the recommendations of the second respondent Commissioner, it would have been more appropriate had counter affidavits been filed by him explaining and clarifying of these situations. The reason for his silence or omission to participate in these matters though represented by

learned Government Pleader and by learned Additional Advocate General remained unanswered.

125. Thus, all these G.Os. suffer from these serious flaws.

126. Further, inspite of the fact that the petitioner was holding such position as Chairman/Trustee and Chairman of both these institutions respectively before displacing him or making him to quit such position, no notice was issued to him. The entire exercise went on behind his back and seriously eroding upon his right to be heard in application of principles of natural justice. It is another serious folly in this entire process of issuing of these four impugned G.Os.

127. Sri Vedula Venkata Ramana, learned Senior Counsel apart from referring to the alleged illegal status of the petitioner in relation to both these institutions relying on 'Principle of illegal relativity' further contended that in the circumstances, no notice was required to be issued to the petitioner and that noncompliance with the principles of natural justice when no prejudice as such is shown, has no effect. In this context referring to constitution of the trust members, where presence of a woman trustee is imminent in terms of Rule 9 of A.P.Charitable and Hindu Religious Institutions and Endowments Appointment of Trustee Rules, 1987 and Section 17(5) of A.P.Act 30 of 1987 it is further contended by the learned senior counsel that the Government has power and authority to pass any order which may be deemed necessary to ensure that these institutions are properly administered, and hence, there is no requirement as such to put the petitioner on notice before initiating action.

128. In support of this contention, reliance is placed in ***ALIGARH MUSLIM UNIVERSITY AND OTHERS v. MANSOOR ALI KHAN***[13]. In this ruling, in paras 21 to 25, it is stated:

> "21. As pointed recently in M.C. Mehta Vs. Union of India[14], there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao vs. Government of Andhra Pradesh[15], it is not necessary to quash the order merely because of violation of principles of natural justice.
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> 22. In M.C.Mehta it was pointed out that at one time, it was held in Ridge vs. Baldwin[16] that breach of principles of natural justice was in itself treated as prejudice and that no other 'defacto' prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In S.L. Kapoor Vs. Jagmohan[17], Chinnappa Reddy, J. followed Ridge vs. Baldwin had set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.
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> 23. Chinnappa Reddy, J. in S.L.Kapoor's case, laid two exceptions namely, " if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the

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[13] (2000) 7 SCC 529
[14] (1999) 6 scc 237
[15] AIR 1966 SC 828 : (1966) 2 SCR 172
[16] 1964 AC 40 : (1963) 2 All ER 66 (HL)
[17] (1980) 4 SCC 379

order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi Vs. State Bank of India[18], Sabyasachi Mukherji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed: quoting *Wade's Administrative Law*,as follows:

"It is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent ....There must have been *some real prejudice* to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth".

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in ***State Bank of Patiala Vs. S.K. Sharma***[19]. In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in Rajendra Singh Vs. State of M.P.[20].

25. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta, referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and

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[18] (1984) 1 SCC 43
[19] (1996) 3 SCC 364
[20] (1996) 5 SCC 460

> Straughton L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De.Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

129. However, a word of caution is administered in para – 34 of this ruling and it is as under:

> "We may add a word of caution. Care must be taken, wherever the court is justifying a denial of natural justice, that its decision is not described as a "preconceived view" or one in substitution of the view of the authority who would have considered the explanation."…….

130. Reliance is also placed in the same context in ***GADDE VENKATESWARA RAO v. GOVERNMENT OF ANDHRA PRADESH AND OTHERS***[21].

131. When the petitioner was admittedly in office in respect of both these institutions, on the basis being member of family of founder proposed replacement by the 4th respondent, requires a notice to him. He did suffer prejudice in the process. Legality of his appointment is vetted by the first respondent, in relation to both these institutions. Principles of natural justice require a notice to the petitioner and it could not have been a useless formality.

132. It is the contention of the respondents 1 and 4 that the appointment of the respondent No.4 as the Chairman cum Trustee of the

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[21] AIR 1966 SC 828

Temple is in terms of the absolute power the Government has under Section 20(1) of Act 30 of 1987 and therefore, it cannot be questioned. It is also the contention of the 4th respondent that she was chosen on account of the merit she has.

133. The material and the facts in this case did not support this stand. The 4th respondent sought her recognition as Member of the Family of the Founder and it was accepted vide G.O.Ms.No.71 Revenue (Endts.II) Department, dated 03.03.2020. Thus, precisely and predominantly she claimed trusteeship as well as the post of the Chairman of this temple under Section 20(1)(b) of Act 30 of 1987. These respondents cannot turn around and state that her appointment is in terms of Section 20(1)(a) of Act 30 of 1987 whereby one of the trustees appointed to the Trust Board under Section 15 of this Act can be elected as a Chairman or the choice is left to the Government including the Commissioner of Endowments for nomination of one of such members as the Chairman, in certain contingencies.

134. Interestingly, G.O.Ms.No.72 dated 03.03.2020 did not refer to the appointment of the 4th respondent, under any of the provisions of Section 20 of this Act. Nor it stated specifically that the 4th respondent has been appointed by nomination by the Government under Section 20(1) of this Act. Para-8 of this G.O.Ms.No.72, dated 03.03.2020 specifically mentioned her recognition as Founder Family Member to this Temple Trust and that she is entitled to hold the post of the Chairman of this Trust. Para – 10 of this G.O. states that she is appointed as Chairman/Hereditary trustee of the temple. Obviously, it indicated that her appointment has been in terms of Section 20(1)(b) of Act 30 of 1987.

135. These respondents apparently faced difficulty in supporting the appointment of respondent No.4 as the Chairman cum Trustee of this temple for more than one reason. By 03.03.2020, viz. the date of issuance of these G.Os.,the petitioner was in office admittedly as Chairman-cum-Trustee of this Temple Trust. Such appointment was on account of he being recognized as member of the family of the Founder vide G.O.Ms.No.123 Revenue (Endts.II) Department, dated 31.03.2016. It is explicit from the contents of G.O.Ms.No.72 itself. Having had been appointed likewise, being Member of the Family of the Founder whose term is indeterminate having regard to the effect of proviso to Section 19(k) of this Act, there was no possibility for the Government to oust or replace him from such position. Effect of Section 20(2) of this Act holds a bar for the Government to interfere with the tenure and position of the petitioner since a Chairman appointed under any one of the contingencies under Section 20(1), shall hold office so long as he continues to be the Member of the Board of Trustees.

136. All these provisions in Act 30 of 1987 provided so much protection to the Chairman of the Board of Trustees, particularly, when he is from the Family of the Founder and recognized as such. He cannot be divested therefrom, at the whims and fancies of the authorities under this Act.

137. Therefore, since the respondents 1 and 4 found themselves in quagmire of effect of these provisions of Act 30 of 1987, they resorted to shifting their stand as if she was nominated as the Chairman of Trust Board by the Government deviating from the contents of G.O.Ms.No.72 Revenue (Endts.II) Department, dated 03.03.2020 taking advantage of absence of mention of the appropriate provision of law there in.

Withdrawal of G.O.Rt.No.252 dated 20.02.2020, already referred to above, all of a sudden without any reason is another instance of this serious impropriety amounting to illegality.

138. It is rather interesting to find that G.O.Ms.No.123 Revenue (Endts.II) Department dated 31.03.2016 and G.O.Ms.No.138 Revenue (Endts.Ii) Department dated 07.04.2016 in respect of these two institutions were issued by Sri J.S.V.Prasad, being the Principal Secretary to the Government. The counter affidavits in these writ petitions are filed and are affirmed by Sri J.S.Venkateswara Prasad, who is now Special Chief Secretary, Revenue (Endowments) Department, Government of A.P. An officer aware of this situation in the year 2016 when the petitioner was appointed as the Chairman to both these institutions for their administration and management certainly finds hard to reconcile with the present situation finding the manner in which all the four impugned G.Os.,have been issued.

139. Contentions are advanced on behalf of the petitioner adverting to Article 19(1)(c) of Constitution of India of right to form an association with reference MANSAS Trust, placing reliance on ***ZOROASTRIAN CO.OP. HOUSING SOCIETY AND ANOTHER v. DISTRICT REGISTRAR, CO.OP.SOCIETY (URBAN) & OTHERS***[22]. On behalf of the respondents, contentions are also advanced with reference to the contents of the Trust Deed and Rules relating to MANSAS Society, *vis a vis* Section 17 of A.P.Act 30 of 1987 being discriminatory, attracting Article 14 of Constitution of India, since these Rules are gender based favouring men

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[22] 2005(5) SCC 632

alone in exclusion of women. These contentions are beside the issue in all these writ petitions.

140. G.O.Ms.No.71 Revenue (Endts.II) Department, dated 03.03.2020, according to the 5th respondent is not specifically challenged in these matters. It is the suggested claim of the 5th respondent that her position as founder family member remained intact, in respect of the temple Trust. It is not so, since G.O.Ms.No.71 dated 03.03.2020, requires interference and her status as such, is affected.

141. Contention on behalf of the respondent No.4 is that consequential relief is not sought in these writ petitions, for the main relief. It is likened to a situation under Section 34 of the Specific Relief Act, when a suit for a bare declaratory relief without consequential relief, cannot be maintained. On behalf of the petitioner, prayer in W.P.No.9895 of 2020 is pointed out, where the relief sought is comprehensive. The contention of the 4th respondent cannot stand, since this Court can grant such relief as required, moulding to the circumstances. If interference with the impugned G.Os. is required, consequences should necessarily follow.

142. The petitioner stated in his affidavit in W.P.No.9895 of 2020 that there are some political reasons in bringing out these G.Os. However, there is no elaboration on this aspect.

143. Nonetheless, the whole exercise in bringing out all the four G.Os., gives raise to any amount of suspicion in relation to the factors that motivated and propelled, in making this attempt. It is manifest from the nature of these G.Os. and reasons assigned there in that it is only to accommodate the 4th respondent, they are so brought out. The

respondents 5 and 6 apparently became the pawns in the hands of the Government and the authorities under this Act, whose attempts were made use of to give a colour of propriety, to favour the 4th respondent in issuing G.O.Ms.No.71 Revenue (Endts.II) Department, dated 03.03.2020 and G.O.Ms.No.73 Revenue (Endts.II) Department, dated 03.03.2020.

144. Therefore, the irresistible inference to draw is that issuance of these G.Os. is a colourable exercise by the Government and authorities under A.P.Act 30 of 1987 suffering from abject arbitrariness. It is in gross abuse and misuse of such powers these G.Os. have been issued and they suffer from illegality on every count. They are issued in excess of exercise of authority under this Act and jurisdiction. Therefore, they are liable to be set aside. Thus, this point is answered in favour of the petitioner and against the respondents.

145. **POINT No.3:** One of the contentions of the respondents 1, 4 and 5 is that the petitioner could not have approached this Court under Article 226 of Constitution of India and that there is an equally efficacious remedy under Section 87 of Act 30 of 1987 to approach an Endowment Tribunal where the question relating to status of a person as a member from the family of the founder of an institution or endowment could be decided.

146. There is a reference to ***Shiur Sakhar Karkhana Pvt. Ltd., vs. State Bank of India***[23], ***State of Bihar and others vs. Jain Plastics and Chemicals***[24], ***Gita Devi Aggarwal vs. Commissioner of Income Tax,***

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[23] 2019 SCC Online SC 1768
[24] AIR 2002 SC 206

West Bengal and others[25], in support of the contention of the 4th respondent that in terms of Section 87 of Act 30 of 1987 when there is an equally efficacious alternative remedy available, a writ petition is not maintainable.

147. The law so applied in these rulings was in the context of the facts concerned thereto. However, there is no dispute of the proposition that in the presence of an equally efficacious alternative relief, a writ remedy is not available. Reasons are assigned supra accepting the contention of the petitioner in approaching this Court in the facts and circumstance invoking extraordinary jurisdiction under Article 226 of Constitution of India. Such a course is permissible **(**vide ***WHIRLPOOL CORPORATION v. REGISTRAR OF TRADE MARKS, MUMBAI AND OTHERS***[26]***)***.

148. It is not necessary for the petitioner to approach Endowment Tribunal in given facts and circumstances, where the impugned G.Os. are found to suffer from such vices pointed out in point No.2 supra. Therefore, alternative efficacious remedy of equal status being available to the petitioner under Section 87 of A.P.Act 30 of 1987 cannot be a reason to reject these writ petitions. They are perfectly maintainable in the circumstances.

149. In respect of application of Section 151 of Act 30 of 1987, providing for bar to entertain any suit or legal proceeding in respect of administration or management of an institution or endowment or any other matters of dispute by a Court, except in terms of Act 30 of 1987, law is settled that a Constitutional Court exercising jurisdiction under

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[25] (1970)76 ITR 496 (SC)
[26] (1998) 8 SCC 1

Article 226 of Constitution of India is not barred or precluded from entertaining a cause, provided there are circumstances made out by a party approaching by means of a writ petition for redressal.

150. It is also contended for the respondent No.4 that the petitioner should have approached the District Court having jurisdiction under Section 23 of A.P. Societies Registration Act, 2001, since MANSAS is a Society registered there under. It is countered on behalf of the petitioner on the ground that MANSAS is a registered institution under Section 38 of A.P.Act 17 of 1966 (Section 43 of A.P.Act 30 of 1987) and hence, this question did not arise. This contention of the petitioner is correct and that there is no reason to approach the District Court.

151. It is an appropriate and fit case where the jurisdiction under Article 226 of Constitution of India requires to be exercised to quash and set aside all the impugned G.Os. This point is held accordingly.

152. **POINT No.4:** The consequence to follow upon the findings on points 1 to 3 is that of the four impugned G.Os.shall be set aside. It is a fit case, where the petitioner is entitled for costs since he has been driven unnecessarily to this litigation. In the process both these institutions have suffered on account of pendency of these writ petitions. There is no prayer from the petitioner for awarding costs and hence, it is not being considered now.

153. W.P.No.6857 of 2020 filed by the 6th respondent Smt.R.V.Sunitha Prasad, in view of the findings recorded above cannot stand and the main relief sought by her is to consider her appointment as Chairman-cum-Trustee of the temple Trust Board at Simhachalam, in preference to the 4th respondent, since she being the founder family member. Thus,

a preferential right is claimed by her in terms of Section 17(1) of A.P.Act 30 of 1987 being daughter of Sri late P.V.G.Raju. In as much as her status as founder family member recognised in G.O.Ms.No.71 Revenue (Endts.II) Department, dated 03.03.2020, now stands rejected, she cannot have a claim to pursue in the writ petition. Consequently, W.P.No.6857 of 2020 should fail.

154. In the result,

(I) W.P.No.6692, 6694 and 9895 of 2020 are allowed. Consequently,

(1) G.O.Ms.No.71 to 74 Revenue (Endts.II) Department, dated 03.03.2020 are set aside.

(2) Recognition of the respondents 4 to 6(Kum. Sanchaitha Gajapathi Raju, Smt. Urmila Gajapathi Raju and Smt. R.V.Sunitha Prasad) as members of family of founder in relation to MANSAS Trust, Vizianagaram and Sri Varaha Lakshmi Narasimha Swamy Vari Devasthanam, Simhachalam, Visakhapatnam District, is set aside.

(3) Appointment of the respondent No.4 (Kum.Sanchaitha Gajapathi Raju) as the hereditary Trustee/Chairman of Sri Varaha Lakshmi Narasimha Swamy Vari Devasthanam, Simhachalam, Visakhapatnam District, is set aside.

(4) Appointment of the Respondent No.4 (Kum.Sanchaitha Gajapathi Raju) as the Chairman of Maharajah Alak Narayan Society of Arts & Science (MANSAS) Trust is set aside.

(5) Appointment of the petitioner as Hereditary Trustee/Chairman of Sri Varaha Lakshmi Narasimha Swamy Vari Devasthanam,

Simhachalam, Visakhapatnam District, is revived and restored, upholding G.O.Ms.No.123, Revenue (Endts.II) Department, dated 31.03.2016, with immediate effect.

(6) Appointment of the petitioner Sri P.Ashok Gajapathi Raju, as the Chairman of Maharajah Alak Narayan Society of Arts & Science (MANSAS) Trust, Vizianagaram, is revived and restored in terms of G.O.Ms.No.138 Revenue (Endts.II) Department, dated 07.04.2016, with immediate effect.

II. W.P.No.6857 of 2020 is dismissed.

No costs.

Interim orders if any, stand vacated. All pending petitions stand closed.

M. VENKATA RAMANA, J

Dt:14.06.2021
RR/Rns

HON'BLE SRI JUSTICE M. VENKATA RAMANA

WRIT PETITION Nos.6692, 6694, 6857 & 9895 of 2020

Date:14.06.2021

RR/Rns