



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P.No.11806 of 2021

Between:

- # 1. J.C. Balanarayana Reddy, S/o. Late aChinna Ranga Reddy, R/o. Door No.1-38, Juturu Village & post, Peddapappuru Mandal, Ananthapur District – 515 411.
2. P. Venkataramanaiah, S/o. Late P.V. Narasimhaiah, Archaka in Sri Vajragiri Lakshmi Narasimha Swamy Temple, Juturu Village, Peddapappuru Mandal, Ananthapur District – 515 411.
3. P. Venkatagiraiah, S/o. Late Lakshminarayananaiah, Archaka in Sri Vajragiri Lakshmi Narasimha Swamy Temple, Juturu Village, Peddapappuru Mandal, Ananthapur District – 515 411.
4. P. Madhavaiah, S/o. Late Kondaiah, Archaka in Sri Vajragiri Lakshmi Narasimha Swamy Temple, Juturu Village, Peddapappuru Mandal, Ananthapur District – 515 411.

... **Petitioner**

AND

- \$ 1. The State of Andhra Pradesh, rep. by its Principal Secretary, Revenue (Endowments) Department, Secretariat, Velagapudi, Amaravathi, Guntur District.
2. The Commissioner, Endowments Department, A.P., Gollapudi, Vijayawada, Krishna District.
3. The Assistant Commissioner, Endowments Department, Ananthapur.
4. The Executive Officer, Group Temples, Peddapappuru, Ananthapur.

... **Respondents**

Date of Judgment pronounced on : -08-2021

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

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



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4. The Executive Officer, Group Temples, Peddapappuru, Ananthapur.

... Respondents

- ! Counsel for petitioners : Sri D.V. Sasidhar
- ^Counsel for Respondents 1 to 3 : G.P. for Endowments
- ^Counsel for Respondent No.4 : Sri G. Ramana Rao Standing Counsel

<GIST:

>HEAD NOTE:

? Cases referred:

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****WRIT PETITION No.11806 of 2021****ORDER:**

Sri Vajragiri Lakshmi Narasimha Swamy Temple, Timmacheruvu Village, Peddapappuru Mandal, Ananthapur District (herein referred as the Temple), is said to be an ancient temple, which was constructed a few centuries back. The petitioners claim that the said temple had become dilapidated and the family members of the 1st petitioner had renovated and developed the temple with their personal funds. The development made is said to be the construction of a Kalyana Mandapam, performance of cultural and religious activities at the time of festivals, a cement road from the base of the hill to the entrance of the temple on the hill, feeding the pilgrims who visit the temple on the occasion of Vysaka Sudda Pournami etc. It is further stated by the petitioners that the affairs of the temple were being managed by the father of the 1st petitioner since 1950 and thereafter by the 1st petitioner on the demise of his father in 1966. It is further submitted that with a view to offer better management of the temple, a society in the name and style of Sri Vajragiri Lakshmi Narasimha Swamy Devasthanam Society was registered in 2016 and the said society has been managing the affairs of the temple, with the 1st petitioner as president.

2. The petitioners further state, in the writ petition, that due to political differences, the Member of the Legislative Assembly of Tadipatri constituency had pressurized the 3rd



respondent to appoint the 4th respondent as an Executive Officer of this temple as a result of which the 3rd respondent by memo No.A4/695/2021 Adm, dated 22.04.2021 had appointed the 4th respondent as the Executive Officer of the temple. The 4th respondent had taken custody of various articles of the deity on 14.05.2021 overawing the archakas who were present in the temple on that day. The petitioners had now approached this Court by way of the present writ petition for a declaration that the appointment of the 4th respondent as an Executive Officer of the temple by the 3rd respondent vide Memo No.A4/695/2021 Adm, dated 22.04.2021 is illegal, arbitrary and without jurisdiction.

3. Sri D.V.Sasidhar, learned counsel for the petitioners, apart from reiterating the contentions set out above, also raised the question of power and authority of the 3rd respondent to issue the impugned order. The learned counsel would point out that the temple, which is registered under Section 6(c) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'Endowments Act') has an annual income of less than Rs.2,00,000/- (Rupees two lakhs only). The authority who can appoint an Executive Officer to a temple, which has an annual income of less than Rs.2,00,000/- (Rupees two lakhs only) under Section 29 of the Endowments Act, is the Commissioner of Endowments only. This appointment is also to be made only after giving adequate reasons as, an Executive Officer, in the normal course of events, should not be appointed for a temple



which has an annual income of less than Rs.2,00,000/- (Rupees two lakhs only). The learned counsel submits that the 3rd respondent, who is an Assistant Commissioner of Endowments, does not have any such authority to appoint an Executive Officer to the temple.

4. The learned Government Pleader for Endowments has submitted written instructions issued by the 3rd respondent. In these instructions, the 3rd respondent has disputed and denied the assertions made by the petitioners in the writ petition and stated that the developments made in and around the temple were not with the contributions of the petitioners or the family of the 1st petitioner. It is stated in the instructions that these developments were made with the contributions obtained from the devotees of the temple. However, the assertion that the temple has an income of less than Rs.2,00,000/- (Rupees two lakhs only) is not disputed. The written instructions state that even though the appointing authority for such Executive Officer is the Commissioner of Endowments, the said authority has been delegated to Zonal Deputy Commissioner and Assistant Commissioner by way of Memo No.D2/10625/2014-I, dated 16.04.2014. It is the stand of the 3rd respondent that in view of the said delegation under Section 8(4) of the Endowments Act, the 3rd respondent is competent to appoint an Executive Officer for the temple.

5. The learned Government Pleader, while reiterating the statements made in the written instructions, has also



submitted that Section 8(4) of the Endowments Act permits the Commissioner of Endowments to delegate his powers or functions to an Assistant Commissioner of Endowments. He submits that since such a power has already been delegated to the Assistant Commissioner, the petitioners cannot claim any lack of jurisdiction or power on the part of the 3rd respondent.

6. The 4th respondent has filed a counter. Sri G.Ramana Rao, learned Standing Counsel for the 4th respondent reiterates the submissions made by the learned Government Pleader for Endowments and has also raised various contentions in relation to the merits of the case.

CONSIDERATION OF THE COURT:-

7. A perusal of the material placed before this Court, along with the written instructions reveal the following facts.

By a letter dated 08.09.2020, the sitting Member of the Legislative Assembly of Tadipatri Constituency is said to have addressed a letter to the Hon'ble Minister for Endowments with a request for appointment of an Executive Officer to the temple. On the basis of this request, the Commissioner Endowments is said to have issued Memo No.Rc.No.E2/15021/70/2021, dated 19.03.2021 to the 3rd respondent to examine the request of appointment of an Executive Officer and submit a detailed report duly suggesting a nearby Executive Officer, so as to take further action in the matter. Upon receipt of this memo, the 3rd respondent had



issued a Memo bearing Rc.No.A4/695/2021 Adm, dated 25.03.2021, to the Inspector of Endowments Department to submit a detailed report suggesting the name of an Executive Officer so as to submit a detailed report to the Commissioner, Endowments Department, Vijayawada, Andhra Pradesh for taking further action. Thereafter, the Inspector of Endowments, addressed a letter dated 17.04.2021 to the 3rd respondent giving the details of the properties owned by the temple and making a recommendation that it is necessary to appoint an Executive Officer to protect these lands from encroachers on the ground that pattadar pass books have been issued to private parties in relation to some of these lands. The Inspector also recommended that the 4th respondent be appointed as an Executive Officer of the temple.

8. These communications reveal that the 3rd respondent was instructed by the Commissioner of Endowments to submit a report for considering the request made earlier for appointment of an Executive Officer. However, the 3rd respondent, instead of forwarding a report to the Commissioner of Endowments, had issued the impugned Memo No.A4/695/2021 Adm, dated 22.04.2021 appointing the 4th respondent as an Executive Officer of the temple and as such the said appointment is not in accordance with the directions of the Commissioner Endowments.

9. The appointment made by the 3rd respondent is assailed on two grounds – firstly, on the ground of lack of



authority to make such an appointment, and secondly, on the merits of the case.

10. The appointment of an Executive Officer to a temple is to be made under Section 29 of the Endowments Act. This provision stipulates that an Executive Officer shall be appointed to every temple. However, the appointment of an Executive Officer to a temple which has annual income of less than Rs.2,00,000/- (Rupees two lakhs only) can be done only by the Commissioner of Endowments for the reasons set out in Section 29 of the Endowment Act, which reads as follows:

“29. Appointment and duties of Executive Officer. -

(1) There shall be an Executive Officer for every Charitable or Religious Institution or Endowment to be appointed by the Government in the case of institutions and Endowments having income of rupees one crore and above and by the Commissioner in the case of other Institutions and Endowments included in the lists published under clauses (a) and (b) of Section 6. In respect of charitable or religious institutions or endowment having income of less than rupees two lakhs per annum, and included in the list published under clause (c) of Section 6, it shall not be necessary to appoint an executive officer. The cadre of Executive Officers to be appointed under this section for the respective institutions on the basis of the income of the Institution or Endowment shall be as may be prescribed:

Provided that, where there is no Executive Officer in respect of any Charitable or Religious Institution or Endowment, the trustee or the Chairman of the Board of Trustees or any employee of any Institution or Endowment where the income exceeds Rs. 2 lakhs, but is less than Rs. 25 lakhs per annum, duly authorised by the Commissioner in this behalf shall exercise the powers and perform the functions and discharge the duties of an Executive Officer:



Provided further that it shall be competent for the Commissioner to appoint an Executive Officer to any institution having income of less than Rs. 2 lakhs per annum if there are substantial immovable properties to the institution or if he is satisfied that such appointment is necessary in the interest of better administration of the institution or for any other reason to be recorded in writing:

Provided also that, it shall be competent for the Commissioner to constitute such number of Charitable and Hindu Religious Institutions and Endowments as may be necessary, into a single group for the purpose of appointing an Executive Officer or any other employee to such group.

(2) The number of Executive Officers in each grade shall be as may be prescribed by the Government from time to time and the Commissioner shall be the appointing authority for the Executive Officer of Grades, I, II and III:

Provided that forty percentum of vacancies in third grade Executive Officers posts and twenty percentum of the vacancies in other two grades of Executive Officers shall be filled by the employees belonging to the institutions or Endowments of prescribed grade:

Provided further that it shall be competent for the Government to appoint a Regional Joint Commissioner as an Executive Officer to any institution and it shall be competent for the Commissioner to appoint a Deputy Commissioner or an Assistant Commissioner as an Executive Officer to any institution basing on the annual income of such institution.

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

(a) The Executive Officer appointed under this section shall be responsible for carrying out all lawful directions issued by such trustee from time to time;

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



- (i) be responsible for the proper maintenance and custody of all the records, accounts and other documents and of all the jewels, valuables, money, funds and other properties of the Institution or Endowment;
- (ii) arrange for the proper collection of income and for incurring of expenditure;
- (iii) sue or be sued in the name of the institution or Endowment in all legal proceedings;

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

- (iv) deposit of money received by the institution or Endowment in such Bank or treasury as may be prescribed and be entitled to sign all orders or cheques against such moneys;

Provided that the Executive Officer shall not encash the fixed deposit certificates pertaining to any scheme or specific endowment under any circumstances;

- (v) have power in cases of emergency to direct the execution of any work or the doing of any act which is provided for in the budget for the year or the immediate execution or the doing of which is in his opinion necessary for the preservation of the properties of the institution or endowment or for the service or safety of pilgrims resorting thereto and to direct that the expenses of executing such work or the doing of such work or the doing of such act shall be paid from the funds of the institution or endowment:

Provided that the Executive Officer shall report forthwith to the Trustee, any action taken by him under this sub-clause and the reasons therefore and obtain approval;



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

(d) The Executive Officer appointed under this section shall be the employee of the Government and the conditions of his service shall be such as may be determined by the Government. The salary, allowances, pension and other remuneration of the Executive Officer shall be paid out of the consolidated fund of the State and later recovered from the Endowment Administrative Fund.

(e) It shall be the duty of the Executive Officer of every Religious or Charitable Institution to foster faith, devotion and ethical conduct in the society, by facilitating formation of a Bhaktha Samajam attached to each Institution, on voluntary basis, consisting of the devotees thereof in order to periodically organize Bhajans, Religious discourses devotional and other Religious programmes such as Nagara Sankeertans etc., appropriate to the Custom, Usage, Tradition and Sampradayams of the Institution concerned.”

11. This would mean that neither the Assistant Commissioner nor the Deputy Commissioner can appoint an Executive Officer for a temple having an annual income of less than Rs.2,00,000/- (Rupees two lakhs only). However, the respondents rely upon Section 8(4) & (5) of Endowments Act and Memo No.D2/10625/2014-I, dated 16.04.2014 to contend that the power of the Commissioner under Section 29 of the Act can be delegated, under Section 8(4)&(5) of the Endowments Act, to Deputy Commissioners and Assistant Commissioners and such power has been delegated under the above memo.

12. Section 8 (4) of the Endowments Act reads as follows.



“8. Powers and functions of Commissioner and Additional Commissioner. –

- (1) xxxx
- (2) xxxx
- (3) xxxx
- (4) xxxxx

(5) The Commissioner may delegate to an Assistant Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act except the powers and functions of the Commissioner under sub Section (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institution or endowment in the sub-division in charge of the Assistant Commissioner subject to such restrictions and control as the Government may, by general or special order, lay down and subject also to such limitations and conditions if any, as may be specified in the order of delegation.”

13. The Memo No.D2/10625/2014-I, dated 16.04.2014

reads as follows:

“It is to inform that under Section 29 of Endowments Act 30/87, the Commissioner of Endowments is the only competent authority to appoint an Executive Officer/Manager to a institution.

But, it has been observed that Zonal Deputy Commissioners and District Assistant Commissioners are appointing Executive Officers and Managers to the temples without any jurisdiction. Aggrieved parties are challenging their appointment orders in Courts and getting it suspended on the ground of jurisdiction.

Hence, all the Zonal Deputy Commissioners and District Assistant Commissioners are requested not to appoint any Executive Officer/ Manager to a temple without prior approval of Commissioner of Endowments. In case of any urgency, they may appoint an Executive Officer/Manager to a temple duly mentioning in the order that this order is subject to ratification of Commissioner of Endowments and they shall take ratification of their appointment order immediately”.



14. A Division Bench of erstwhile High Court of Andhra Pradesh had an occasion to consider these provisions of law in similar circumstances in the case of **Yadalla Pitchaiah Chetty vs. Government of Andhra Pradesh and others (2001 (6) ALD 315 (DB))** and held as under:

“8. In the aforementioned backdrop, the contention of the learned Government Pleader, as would appear from the impugned order, that the same has been passed at the instance of the Commissioner, must be examined. The submission of the learned Government Pleader cannot be accepted both on facts as also in law. Before us, the records have been produced, from a perusal whereof it appears that the Commissioner by an order dated 10-5-1990 appointed one P.V. Subba Reddy as Executive Officer of Sri Lakshmi Narasimha Swamy Temple, Chinna Dasaripalle. The Commissioner, therefore, did not appoint any Executive Officer in respect of the Choultry or temple in question, but despite the same, the Deputy Commissioner appointed P.V. Subba Reddy as Executive Officer in relation to fifteen temples. The impugned order, therefore, suffers such exercise of power is hatched with the conditions referred to therein. Not only if a general or special power is exercised, the same has to be done by issuing an appropriate order which would show application of mind on the part of the delegating authority, but such order must be notified in the Official Gazette. Furthermore, prior to exercising such power, the matter is required to be placed before the State Government inasmuch as the State Government, in terms of Sub-section (4) of Section 8 of the Act, is entitled to put such restrictions and control as may be laid down. Having regard to the fact that neither any general or special power nor no power in accordance with law has



been delegated in favour of the Deputy Commissioner in terms of Sub-section (4) of Section 8 of the Act, the impugned order could not have been sustained even on the ground that the Deputy Commissioner has acted under the directions of the Commissioner.”

15. The above passage stipulates the following steps before delegation of power can be made either under Section 8(4) or under Section 8(5) of the Endowments Act:

1) The requirement of delegation of power under Section 8(4) & (5) of the Endowment Act should be placed before the State Government by the Commissioner of Endowments.

2) The Government, after considering the request of the Commissioner of Endowments, would either reject the request or approve the request with such restrictions and controls as the Government may decide.

3) If such permission is granted by the State Government, the said delegation of power done by the Commissioner has to be notified in the official gazette.

16. In the present case, no such procedure appears to have been followed as the delegation of power by the Commissioner of Endowments is said to have been done by a Memo issued on the instructions of the Additional Commissioner of Endowments. A reading of the said memo



does not show that the proposed delegation of power has been placed for the consideration of the Government or that it was published in the Gazette. The 3rd respondent, who is an Assistant Commissioner of Endowments, does not have power or authority to appoint an Executive Officer to the temple.

17. In view of the finding on the lack of power or authority a further decision on the merits of the case would be unnecessary.

18. Accordingly, the writ petition is allowed by setting aside the impugned Memo No.A4/695/2021 Adm, dated 22.04.2021 issued by the 3rd respondent. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO, J.

____.08.2021
SDP



HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

WRIT PETITION No.11806 of 2021

 -08-2021

SDP