



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P.No.12609 of 2021

Between:

1. N.Govinda Swamy, S/o.Late Sri Sri Sri Veerabhoga Vasantha Venkateswara Swamy Varu, Aged about 14 years, Being Minor, Rep.by his Mother and Natural Guardian, Smt.N.Maruthi Mahalakshmi, R/o.Sri Mad Virat Pothuluri Veera Brahmendra Swamy Mutt, Kandi Mallayapalli Village, Brahmamgari MathanmMandal, YSR Kadapa District.
2. Smt.N.Maruthi Mahalakshmi, W/o.late Sri Sri Sri Veerabhoga Vasantha Venkateswara Swamy Varu, Hindu, Aged about 40 years, R/o.Sri Mad Virat Pothuluri Veera Brahmendra Swamy Mutt, Kandi Mallayapalli Village, Brahmamgari Matham Mandal, YSR Kadapa District.

... Petitioners

And

1. The State of Andhra Pradesh, Rep.by its Principal Secretary, Revenue, Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.
2. The Special Commissioner of Endowments, Government of Andhra Pradesh, Gollapudi, Vijayawada, Krishna District.
3. Andhra Pradesh Dharmika Parishad, Rep.by its Member Secretary, O/o. Commissioner of Endowments, Gollapudi, Vijayawada, Krishna District.
4. The Assistant Commissioner of Endowments, Kadapa, YSR Kadapa District.
5. The Deputy Commissioner of Endowments, Kurnool, Kurnool District.
6. The Commissioner of Endowments, Government of Andhra Pradesh, Gollapudi, Vijayawada, Krishna District.

... Respondents



Date of Pronouncement of Judgment : 16-07-2021

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

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



***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

+ W.P.No.12609 of 2021

% Dated: 16-07-2021

- #1. N.Govinda Swamy, S/o.Late Sri Sri Sri Veerabhoga Vasantha Venkateswara Swamy Varu, Aged about 14 years, Being Minor, Rep.by his Mother and Natural Guardian, Smt.N.Maruthi Mahalakshmi, R/o.Sri Mad Virat Pothuluri Veera Brahmendra Swamy Mutt, Kandi Mallayapalli Village, Brahmangari MathanMandal, YSR Kadapa District.
2. Smt.N.Maruthi Mahalakshmi, W/o.late Sri Sri Sri Veerabhoga Vasantha Venkateswara Swamy Varu, Hindu, Aged about 40 years, R/o.Sri Mad Virat Pothuluri Veera Brahmendra Swamy Mutt, Kandi Mallayapalli Village, Brahmangari Matham Mandal, YSR Kadapa District.

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5. The Deputy Commissioner of Endowments, Kurnool, Kurnool District.
6. The Commissioner of Endowments, Government of Andhra Pradesh, Gollapudi, Vijayawada, Krishna District.

... Respondents



! Counsel for petitioner : M. Pitchaiah

^Counsel for Respondents 1 to 6 : G.P. for Endowments

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>HEAD NOTE:

? Cases referred:

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****WRIT PETITION No.12609 of 2021****ORDER:**

The interim management of Sri Mad Virat Pothuluri Veera Brahmendra Swamy Mutt (herein after referred as “the Mutt”), is the subject matter of the dispute before this Court.

2. The 2nd petitioner is the widow of the 11th Peethadhipathi of the Mutt. He passed away on 08.05.2021. It is the case of the 2nd petitioner that her elder son, who is the 1st petitioner herein, had been nominated by her late husband as the person to be appointed as Peethadhipathi by way of a Will executed on 10.11.2018. It is also the case of the petitioners that as the 1st petitioner was still a minor, it was stipulated in the Will that the 2nd petitioner would be a temporary Peethadhipathi, till the 1st petitioner attains majority. It is the case of the petitioners that the deceased Peethadhipathi had, on 01.10.2010, nominated the 1st petitioner as his successor Peethadhipathi and intimated the said nomination on the same day to the Dharmika Parishad by way of a letter sent under certificate of posting. It is further submitted that the nomination of the 1st petitioner as the permanent Peethadhipathi and the 2nd petitioner as the temporary Peethadhipathi under the Will dated 10.11.2018 was also intimated to the Dharmika Parishad.

3. The petitioners have now approached this Court on the ground that the 2nd respondent had issued proceedings in



Rc.No.DPCELL/COE-25030(31)/152021, dated 12.06.2021, under Section 52 of the Endowments Act, appointing the Assistant Commissioner, Endowments Department, Kadapa as a fit person under Section 51 of the Endowments Act to take over the administration of the Mutt.

4. The learned Government Pleader for Endowments, appearing for the official respondents submitted written instructions from the respondents, the proceedings of the Dharmika Parishad, which took the decision to appoint a fit person under Section 52 of the Endowments Act, and also the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Dharmika Parishad Rules, 2009 (herein after referred to as the Dharmika Parishad Rules).

5. Sri M. Pitchaiah, learned counsel for the petitioners after having gone through the written instructions and the documents and the proceedings of the Dharmika Parishad assails the impugned order dated 12.06.2021 as well as the proceedings of the Dharmika Parishad on the following grounds:

i) Section 52 of the Endowments Act would not be applicable to the present case for the following reasons:

a) Section 52 of the Endowments Act would apply only where there is a temporary vacancy or dispute in regard to right of succession in a temporary vacancy or where the Peethadhipathi is a minor and does not have a proper guardian. He submits that none of the situations arise in the present case as the death of the earlier Peethadhipathi has created a permanent



vacancy and the 2nd petitioner, who is the mother of the 1st petitioner is willing to act as the guardian of the 1st petitioner till he attains majority.

- b) The dispute relating to succession would not be in relation to a permanent vacancy and only relates to a temporary vacancy as can be seen from the language of the provision.
- ii) Rule 13 to 22 of the Dharmika Parishad Rules set out the manner in which a meeting of the Dharmika Parishad is to be conducted. These rules require notices to be sent to the members of the Dharmika Parishad along with an agenda setting out the issues to be discussed in the meeting.

6. In the present case, no such meeting has been called for, and as such, the decision of the Dharmika Parishad cannot be accepted, as it was signed without a meeting. Rule 23 of the Dharmika Parishad Rules stipulate that a decision can be taken by way of resolution, provided, it is a unanimous decision of all the members of the Dharmika Parishad. In the present case, even according to the respondents, there are four members in the Dharmika Parishad. However, one member, viz., the Executive Officer of Tirumala Tirupathi Devasthanam did not sign the note filed by way of circulation. In the absence of the assent of the Executive Officer, by way of his signature on the resolution, the requirement of a unanimous decision has not been complied with.

7. The requirement of unanimous decision is mandatory, in as much as, an emergency meeting has to be



called in the event of the members of the Dharmika Parishad failing to have unanimity.

8. One of the members of the Dharmika Parishad is shown to be the Special Commissioner. A reading of the Endowments Act would show that there is no designation of Special Commissioner available in the Endowments Act. The definition of Commissioner, as set out in Section 2(6), does not include a Special Commissioner. In the circumstances, the impugned order dated 12.06.2021 issued by the Special Commissioner, allegedly on behalf of the Dharmika Parishad, does not answer the requirements of the Dharmika Parishad Rules.

9. Sri M.Pitchaiah, learned counsel for the petitioners would submit that for all the aforesaid reasons, the impugned proceedings would have to be set aside.

10. The learned Government Pleader for Endowments has filed written instructions and also the proceedings of the Dharmika Parishad, on the basis of which the impugned order has been passed. She would submit that the proceedings under Section 52 of the Endowments Act have been initiated on account of the disputes, between the members of the family of the deceased Peethadhipathi, in relation to the succession to the office of Peethadhipathi of the Mutt. Section 52 of the Endowments Act clearly provides for appointment of a fit person, as a temporary measure, till the succession is decided. In the



circumstances, the decision of the Dharmika Parishad cannot be held to be without jurisdiction or irregular.

11. She further submits that Rule 4 of the Dharmika Parishad Rules permits the Chairman of the Dharmika Parishad to take decisions, when there is no time for the Dharmika Parishad to meet or take a decision on the issue. She would further submit that since the Hon'ble Minister for Endowments, was a participant of the proceedings of the Dharmika Parishad, it can always be held that even if the proceedings of the Dharmika Parishad are not in accordance with the Rules, the presence of the Chairman would save the resolution by virtue of Rule 4 of the Dharmika Parishad Rules.

12. On facts, she would submit that the telephonic approval was obtained from the Executive Officer, TTD and as such, it cannot be said that there is no unanimity in the decision. In the alternative, she would also submit that since all the members, who signed the resolution have expressed the same view, it would have to be treated as an unanimous decision of the Dharmika Parishad and the absence of assent or signature of one of the members cannot be treated as a situation where there is no unanimity between the members.

Consideration of the Court:

13. The contentions of Sri M.Pitchaiah, learned counsel for the petitioners are twofold. Firstly, Section 52 is not available for the Dharmika Parishad to make an arrangement for the management of the Mutt and secondly, even if the Dharmika Parishad has such a power, the manner in which such power



has been exercised is not in accordance with the act and the Dharmika Parishad Rules.

14. Sri M. Pitchaiah, learned counsel for the petitioners contends that Section 52 of the Endowments Act would apply only to a case of temporary vacancy and cannot be applied in the case of a permanent vacancy.

15. The provisions relating to Mutts and specific endowments attached there to are contained in Chapter 5 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. Section 53 provides for filling of permanent vacancies in the office of the Peethadhipathi. Section 54 provides that a sitting Peethadhipathi may nominate his successor and the said nomination should be intimated to the Dharmika Parishad within 90 days of such nomination. It is further stipulated that such nomination will not be completed until it is recognized by the Dharmika Parishad. Where there is a temporary vacancy or where there is a dispute in regard to the right of succession to such office, the Dharmika Parishad can make an arrangement for the administration of the Mutt, till Peethadhipathi is appointed.

16. The language of Section 52 is not restricted only to a situation where there is a temporary vacancy. The words “there is a dispute in regard to the right of succession to such office”, in section 52 of the Act, clearly show that the Dharmika Parishad is empowered to make an arrangement in the administration of a



Mutt where, the succession to the office of the Peethadhipathi, in a permanent vacancy, is in dispute.

17. A perusal of the documents placed before the Court by the petitioners as well as the respondents show that there is a dispute regarding succession to the office of Sri Mad Virat Pothuluri Veera Brahmendra Swamy Mutt. On the one hand, the petitioners claim that the first petitioner is the person nominated by the deceased Peethadhipathi as his successor by virtue of the Will dated 10.11.2018 and that, such a Will and also a nomination made by the deceased Peethadhipathi was intimated to the Dharmika Parishad. On the other hand, the children of the first wife of the deceased Peethadhipathi are also making claims to the office of the Peethadhipathi of the Mutt. The proceedings of the 2nd respondent as well as the proceedings of the Dharmika Parishad, which have now been placed before this Court by the learned Government Pleader, would mention these disputes as the reason for exercising the power under section 52 of the Act. In such a situation, the exercise of power cannot be said to be without jurisdiction.

18. On the question of the procedural defects in the decision making process, the contention of Sri M. Pitchaiah, learned counsel for the petitioners is that the Dharmika Parishad Rules require a meeting to be held, before any decision can be taken by the Dharmika Parishad. He contends that in the present case no meeting was held and only the signatures of the members of the Dharmika Parishad appear to have been taken



and the same is in violation of the procedure set out under Rule 13 to Rule 22 of the Dharmika Parishad Rules. He further contends that even if Rule 23 is to be applied, the resolution has to be an unanimous resolution of the Dharmika Parishad and in the present case, the Executive Officer of TTD has not signed the resolution and as such, there is no unanimous resolution. An ancillary objection is that it is the Commissioner of Endowments, who is a member of the Dharmika Parishad and a person designated as Special Commissioner cannot take the place of the Commissioner.

19. Section 152 of the Act, which provides for the constitution of a Dharmika Parishad reads as follows:

(1) The Government shall, by notification in the 'Andhra Pradesh Dharmika parishad' for the State consisting of the following members, namely:-

- (i) Minister for Endowments who shall be the Chairman;*
- (ii) The Principal Secretary/Secretary to Government, Revenue Department in charge of religious and Charitable Institutions and Endowments;*
- (iii) The Commissioner of Endowments who shall be member secretary;*
- (iv) The Executive Officer, Tirumala Tirupathi Devasthanams;*
- (v) one representative each from the Chairmen of Boards of Trustees from Section 6(a)(i) and (ii), Section 6(b)(i) and (ii), Section 6(c)(i) and (ii) and two Mathadhipathis published under Section 6(d) of the Act;*
- (vi) Retired Senior Officer of the Government who is a devout Hindu and has experience of and commitment to improve the Hindu Temple system, to be nominated by the Government;*
- (vii) A retired senior officer of the endowments department*



- (viii) *Retired judge of the High Court who is a devout Hindu and has commitment to improve the Hindu Temple system;*
- (ix) *A legal luminary/Advocate aged more than 62 years who is a devout Hindu and has experience and has commitment to improve the Hindu Temple system.*
- (x) *Two prominent philanthropists who have a track record of establishment, maintenance and supporting various endowments, Charitable and Hindu religious institutions to be nominated by the Government;*
- (xi) *Two Agama pandits to be nominated by the government;*
- (xii) *one chartered accountant who is a devout Hindu and has a commitment to improve the Hindu Temple system, to be nominated by the Government.*

(2) The Parishad may for the purpose of consultation, invite any person having experience and specialized knowledge in any subject under its consideration to attend its meetings and every such person shall be entitled to such allowances as may be prescribed.

(3) The powers, functions and term of office etc., of the members of Andhra Pradesh Dharmika Parishad shall be such, as may be prescribed.

(4) The Government may by order delegate its powers and functions to the Andhra Pradesh Dharmika Parishad.]

20. The proceedings of the Dharmika Parishad, produced by the learned Government Pleader, show that, presently, the Dharmika Parishad consists only of the four official members, including the Commissioner of Endowments, enumerated in Section 152 (1) (i) to (iv). The controversy is whether the person



given the designation of special commissioner can be equated with “Commissioner” under the Endowment Act.

21. The Commissioner of Endowments is to be appointed under Section 3(1) of the Endowments Act. The definition of “Commissioner” is contained in Section 2(6) which reads as follows:

“Commissioner means the Commissioner and the Additional Commissioner appointed under sub-section (1) of Section 3 and includes every officer who for the time being exercises the powers and performs the functions of a Commissioner under this Act or the rules made there under in respect of any charitable or religious institution or endowment as specified in sub-section (5) of Section 3.

22. A perusal of this provision would show that only the Commissioner and Additional Commissioner appointed under Sub section 3(1) of the Act, can be held to be Commissioner of Endowments under the Act.

23. The learned Government Pleader for Endowment would submit that under the same definition, all officers who exercise the power and perform the functions of a Commissioner under the act or the rules made there under, can also be treated as a “Commissioner”. She submits that since the Special Commissioner is exercising all the powers and is performing the functions of a Commissioner, the contention of Sri M. Pitchaiah, learned counsel for the petitioners, cannot be accepted.



24. While the contention of the learned Government Pleader appears attractive at first blush, it must be kept in mind that unless there is a proceeding of the Government or statutory authority conferring the powers of the Commissioner on the Special Commissioner, it would be difficult to accept the contention that the Special Commissioner should be treated as the Commissioner under the Act. However, this issue need not detain us and the said issue is left open for the following reason. The Resolution of the Dharmika Parishad is signed by three out of the present four members, including the Special Commissioner, of the Dharmika Parishad. Even if the contention of Sri M.Pitchaiah, is to be accepted, it would only mean that there is no person holding the post of Commissioner of Endowments and that the Dharmika Parishad has only three members, namely the Hon'ble minister for Endowments, the Principal Secretary to Government and the Executive Officer, Tirumala Tirupathi Devasthanams, and this Court would be required to see if all the remaining members of the Dharmika Parishad had assented to the resolution. In such a situation the signature of the Special Commissioner, acting as the Commissioner may not be relevant.

25. It is true, Rule 13 to Rule 22 of the Dharmika Parishad Rules set out the procedure under which the Dharmika Parishad is to meet and the manner in which the decisions are to be taken. However, none of these Rules would be applicable to the present case as it is contended by the learned Government



Pleader that the decision of the Dharmika Parishad was taken by way of a resolution by circulation under Rule 23 of the Dharmika Parishad Rules. This Rule provides for a resolution by circulation where the situation merits an immediate response from the Dharmika Parishad without waiting for a formal meeting to be convened. The said rule reads as follows:

(i) The Chairman may in case of emergency, ascertain the opinion of the members by circulation of the records among the members and, in case of unanimity of opinion, carry out the decision. If there is difference of opinion among the members during such circulation, the matter shall be considered at an emergency meeting convened for that purpose.

(ii) Where an unanimous decision is taken in circulation, it shall be placed before the next meeting of the Dharmika Parishad for confirmation.

26. As the resolution by circulation under Rule 23 is an emergency measure, no specific procedure is set out for such a resolution by circulation. However, the requirement is that the resolution by circulation has to be unanimous. Even one dissent is sufficient to defeat the resolution by circulation and the Dharmika Parishad would have to mandatorily hold a meeting in the event of even a single dissent in a resolution by circulation.

27. In the present case, it is the case of the respondents that the Dharmika Parishad presently consists of four members, the Hon'ble Minister of Endowments, the Principal Secretary, Revenue, the Commissioner of Endowments and the Executive Officer of TTD etc.

28. The contention by Sri M.Pitchaiah, learned counsel for the petitioners is that the absence of the signature of the



Executive Officer, TTD results in a situation where there is no unanimous decision of the Dharmika Parishad. The learned Government Pleader for Endowments submits that as long as there is no dissent expressed by any member of the Dharmika Parishad, the resolution by circulation should be treated as unanimous.

29. Rules 13 to 22, which provides the procedure for conduct of meetings of the Dharmika Parishad, stipulate a minimum quorum and the need for decisions to be by way of majority. Due to various reasons, some of the members may not be able to attend all the meetings. Keeping this practicality in mind, the general rule is that a meeting is valid and the decision taken in such meeting binding on all the concerned, provided a minimum number of members attend. In the case of resolution by circulation, such practical difficulties do not arise, as the resolution is circulated to all the members. In that process, the question of the resolution not being circulated to any member would not and cannot arise. Further, the requirement of unanimity in a resolution by circulation is not qualified with any leeway for near unanimity or decision by majority. Consequently, the requirement of a unanimous resolution by circulation, under Rule 23 of the Dharmika Parishad Rules, would require that all the members of the Dharmika Parishad have to give their assent to such a resolution. In the absence of a positive assent to the resolution by all the members, it would have to be treated that the resolution is not unanimous.



30. The learned Government Pleader has relied on rule 4 of the Dharmika Parishad Rules to contend that since the Chairman of the Dharmika Parishad had participated in the meeting, the decision would have to be treated as a decision under rule 4. The said Rule 4 reads as follows:

“The Chairman of Dharmika Parishad is authorized to exercise the functions of Dharmika Parishad in regard to constitution of Trust Boards and any other matter of urgency and place the same before the Dharmika Parishad for ratification in the next meeting”.

31. The said Rule comes into operation only when the chairman, in cases of extreme and dire urgency, takes a decision and thereafter the decision is placed before the Dharmika Parishad for ratification. In the present case, the resolution was by the Dharmika Parishad itself. The assent of the chairman in the resolution cannot bring the resolution under Rule 4. Any such interpretation would mean render the requirement of unanimity among all the members of the Dharmika Parishad, under Rule 23, otiose. This contention cannot be accepted.

32. In these circumstance, the writ petition is allowed and the resolution of the 2nd respondent Dharmika Parishad dated 12.06.2021 vide proceedings in Rc.No.DPCELL/COE-25030(31)/152021 is set aside, leaving it open to the Dharmika Parishad to reconsider and pass resolutions in accordance with the provisions of the Act and the Rules. There shall be no order as to costs.



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

16.07.2021

RJS

Note:

Issue CC today

R. RAGHUNANDAN RAO, J.



HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

WRIT PETITION No.12609 of 2021

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