

V. Padmanabhan and ors. Vs. the Commissioner, Hindu Religious and Charitable Endowments and ors.

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Court : Kerala

Decided On : Jul-10-2007

Reported in : 2007(2)KLJ730

Judge : K.S. Radhakrishnan and; Antony Dominic, JJ.

Acts : [Hindu Religious and Charitable Endowments Act, 1951](#) - Sections 20, 39, 39(1), 39(2), 39(3) and 39(4)

Appeal No. : W.P.(C) No. 30254 of 2006(B)

Appellant : V. Padmanabhan and ors.

Respondent : The Commissioner, Hindu Religious and Charitable Endowments and ors.

Advocate for Def. : K. Sandesh Raj, GP,; K.P. Kylasanatha Pillay,; Sreedevi

Advocate for Pet/Ap. : R. Surendran, Adv.

Disposition : Petition dismissed

Judgement :

K.S. Radhakrishnan, J.

1. Extp. P10 order passed by the Commissioner, Hindu Religious & Charitable Endowments (Administration) Department dated 10-11-2006 is under challenge in W.P.C. No. 30254 of 2006. Commissioner by that order removed the petitioners therein from the Trustee Board of T.T.K. Devaswom on the ground that they are ineligible to continue as non hereditary trustees in the Board since their appointments were in violation W.P.(C) No. 30254 of 2006(B) Decided on 10-07-2007 of Ext.PI 1 guidelines date 18-05-2004 issued for the selection of non hereditary trustees for temples under the control of H.R. & C.E. Commissioner has taken the view that evidence produced by the fourth respondent and the report of the Assistant Commissioner would show that the petitioners are disqualified to be appointed as trustees. Consequently a declaration was made to that effect. Further it was ordered that the vacancies should be renotified in accordance with the guidelines and fresh selection be made.

2. Counsel for the petitioners submitted that Ext.P10 order is illegal and the Commissioner has no jurisdiction to pass such an order and no reasons exist to disqualify the petitioners. Further it was stated that petitioner is not a politician and in any view of the matter Ext.P 11 guidelines does not completely bar the appointment of active politicians as non hereditary trustees of a temple managed by H.R. & C.E. Counsel submits that all these facts were taken into consideration when Ext.P3 order was issued on 25-07-2005 and that the Commissioner has no jurisdiction to review that order. Counsel submitted that Ext.P3 order was validly passed under Section 39 of the H.R.& C.E. Act and the non hereditary trustees can continue in office as per a scheme for a period of three years from the date of the first meeting of the committee.

3. Counsel appearing for the respondents on the other hand contended that the Commissioner has got the power to disqualify the petitioners after having found that they are not eligible to be appointed as non hereditary trustees being active politicians. Counsel submitted that the Commissioner was only correcting a mistake so as to strictly follow the guidelines.

4. Sri Kylasanatha Filial, counsel appearing for the third respondent supported the contentions of the petitioners. Learned Government Pleader Sri Sandesh Raja

submitted that the Commissioner is justified in issuing ExtP10 order since report of the Assistant Commissioner dated 20-09-2006 states that the petitioners are active politicians. Counsel further submitted that the power has been conferred on the Commissioner to pass Ext.P 10 order since the administration of all religious institutions/endowments shall be subject to his superintendence and control and hence he has got the power to issue Ext.P10 order.

5. Ext.P3 is the order passed by the Commissioner on 25-07-2005 appointing the petitioners as non hereditary trustees of the Devaswom. Notification dated 04-07-2005 was published inviting applications for the post of non hereditary trustees. 14-07-2005 was the last date for submitting applications. Pursuant to the notification 28 persons applied including the petitioners. Enquiry was conducted by the Assistant Commissioner with regard to the eligibility of the applicants and he submitted a report on 21-07-2005. Based on that report, the Commissioner in exercise of the powers under Section 39 of the H.R. & C.E. Act appointed the petitioners as non hereditary trustees of the Devaswom and they are in office now.

6. The fourth respondent, after an year, filed Ext.P4 complaint before the Commissioner on 10-07-2006 alleging that the petitioners are active politicians and therefore are not entitled to continue as members of the Board of Trustees. Bases on the complaint an enquiry was conducted by the Assistant Commissioner who submitted Ext.P5 report dated 22-09-2006 stating that allegations made in the representation were found to be genuine and recommended for the removal of the petitioners from the Board of Trustees. Later Ext.P6 notice was issued to the petitioners to which they filed detailed objection. Accordingly Ext.P10 order was passed disqualifying them and removing them from the Board of Trustees of the devaswom.

7. W.P.C. No. 32998 of 2006 was filed by a person who was appointed as hereditary trustee by the first respondent for a term of five years by order dated 01-03-2006 after inviting applications from the public. The order was issued under Section 39 of the H.R. & C.E. Act. That order was challenged before this Court in various writ petitions. Reference may be made to W.P.C. No. 21154 of 2006 and other writ petitions. W.P.C. No. 27279 of 2006 was the writ petition filed by the

petitioner challenging Ext.P3 order dated 10-10-2006 removing the petitioners therein from the trusteeship due to the complaint that he was an active politician. W.P.C. No. 27279 of 2006 was disposed of by this Court directing the Commissioner to reconsider the matter. Petitioner filed detailed representation before the Commissioner stating that there is no justification in removing him from the trusteeship and he has no connection with any political party and it is stated that he is not active politician. Further it was also pointed out that the Commissioner has no jurisdiction to review the earlier order which has attained finality. For disposal of this case it is unnecessary to refer to the previous history of the litigation. Suffice to say Commissioner has passed Ext.P6 order dated 24-11-2006 reviewing the earlier order appointing the petitioner as hereditary trustee of the temple. W.P.C. 33319 of 2006 filed for directing the respondents to appoint the petitioner therein as a non hereditary trustee of the Sree Parakkat Bhagavathy temple.

8. Learned Government Pleader submitted that the Commissioner has got the power under Section 20 of the H.R. & C.E. Act 1951 to review the earlier order passed. Section 20 is extracted below for easy reference.

20. Powers and duties of the Commissioner in respect of religious endowments - Subject to the provisions of this Act, the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner, and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist.

Section 20 is a general provision conferring power of superintendence and control of the religious endowments on the Commissioner, which in our view, does not enable the Commissioner to review an order passed by the Commissioner under Section 39 of the Act. For easy reference we may extract Section 39 as follows:

39. Trustees and their number and term of office. (1) Where a religious institution included in the list published under Section 39 or over which no Area Committee has jurisdiction, has no hereditary trustee, the Commissioner shall constitute a

Board of Trustees consisting of not less than three and not more than five persons appointed by him.

(2) Where, in the case of any such institution having a hereditary trustee or trustees; the Commissioner after notice to such trustee or trustees, and after such enquiry as he deems adequate, considers for reasons to be recorded, that the affairs of the institution are not, and are not likely to be, properly managed by the hereditary trustee or trustees, the Commissioner may, by order appoint such number of non hereditary trustees as he thinks necessary, so however that the total number of trustees does not exceed five.

(3) Every trustee appointed under Sub-section (1) and subject to the result of an application, if any, filed under Sub-section (4) every non-hereditary trustee appointed under Sub-section (2) shall hold office for a term of five years, unless in the meanwhile the trustee is removed or dismissed or his resignation is accepted by the Commissioner or he otherwise ceased to be a trustee.

(4) Where the Commissioner by order appoints a non-hereditary trustee or trustees the hereditary trustee or trustees may, within thirty days of the receipt of the order, file an application to the court to set aside or modify such order.

(5) Where a vacancy arises in the office of a non hereditary trustee appointed under Sub-section (2) the Commissioner shall not fill up such a vacancy unless, for reasons to be recorded, he considers it necessary to do so. A non hereditary trustee appointed in the vacancy shall be deemed to have been appointed under Sub-section (2) and the provisions of Sub-sections (3) and (4) shall apply accordingly.

Section 39(1) empowers the Commissioner to constitute a Board, of Trustees consisting of not less than three and not more than five persons appointed by him. Sub-section (2) states that the Commissioner after notice to such trustee or trustees, and after such enquiry as he deems adequate, considers for reasons to be recorded, that the affairs of the institution are not, and are not likely to be, properly managed by the hereditary trustee or trustees, may by order appoint such number of non-hereditary trustees as he thinks necessary, so however that the

total number of trustees shall not exceed five. Power under Section 39 can be exercised only after giving due notice to the hereditary trustee.

9. Commissioner in his orders has stated that the petitioner was appointed as no hereditary trustee disregarding the guidelines issued. Commissioner, in our view, has no power to review an order passed under Section 39 of the Act. Unless power of review is specifically conferred on the Commissioner he does not get jurisdiction to review an earlier order passed on the basis of which rights have been crystallised on the parties. No provision has been brought to our notice conferring power on the Commissioner to review an order passed under Section 39 of the Act. Commissioner while passing order under Section 39 is exercising a quasi judicial function.

10. Apex Court in Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya : 1987(32)ELT8(SC) has held that quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The apex court held that when an authority has acted wholly without jurisdiction the High Court should not refuse to exercise its jurisdiction under Article 226 on the ground of existence of an alternative remedy. In that case it was noticed that the Vice Chancellor has no power of review and the exercise of such a power by her was absolutely without jurisdiction. It was noticed that such an order of review was nullify and the apex court held that the High Court was not justified in dismissing the writ petition on the ground that an alternative remedy was available to the appellant. The above dictum was followed by a learned single Judge of this Court in K.S.R.T.C. v. Anilkumar 2007(2) KLT 700. It is trite law that there is no inherent power of review with any authority unless it is specifically conferred by the statute. Reference may be made to the decisions of the apex court in Patel Narshi Thakershi and Ors. v. Sri Pradyuman Singhji Arjunsinghji : AIR 1970 SC1273 . Mehar Singh Nanank Chand v. Sri. Naunihal Thakurdas : AIR 1972 SC2533 . P.R. Verma v. Union of India : (1980)IILLJ152SC . A Division Bench of this Court to which one of us (Radhakrishnan, J.) was a party following the above mentioned decisions held in Guruvavoor Prathikarana Vedi v. Secretary to Government : 2005(1)KLT19 that the Devaswom Committee cannot review its earlier order unless power of review is

specifically conferred by the statute.

11. The Commissioner was therefore not justified in passing Ext P10 order which is a nullity, it having been passed by an authority who lacks jurisdiction. Ext.P6 order in W.P.C. No. 32998 of 2006 would also stand quashed for the above mentioned reasons and the petitioner therefore is entitled to continue as a non hereditary trustee of the temple. In W.P.C. No. 33319 of 2006. Petitioner has not made out a case for issuance of a writ of mandamus and hence that writ petition is dismissed.

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