

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE NINALA JAYASURYA

WRIT APPEAL No. 535 of 2021

(Taken up through video conferencing)

N. Govinda Swamy, S/o. late Sri Sri Sri Veerabhoga Vasanta Venkateswara Swamy Varu, aged about 14 years, rep. by his Mother and Natural Guardian, Smt. N. Maruthi Mahalkshmi, R/o.Sri Mad Virat Pothuluri Veera Bhrahmendra Swamy Mutt, Kandi Mallayapalli Village, Brahmamgari Matham Mandal, Y.S.R. Kadapa District and another.

....Appellants

Versus

The State of Andhra Pradesh, rep. by its Principal Secretary, Revenue (Endowment Wing) Department, Secretariat Buildings, Velagapudi, Amaravathi, Guntur District, and others.

.... Respondents

Counsel for the appellants	:	Mr. M. Pitchaiah
Counsel for the respondents	:	Ms. P. Rajani, Government Pleader for Endowments
Date of hearing	:	01.09.2021
Date of Pronouncement	:	23.09.2021.

JUDGMENT

(Per Ninala Jayasurya, J)

The appellants who are petitioners in the W.P.No.12609 of 2021, aggrieved by the order dated 16.07.2021 passed by the learned Single Judge, filed the present appeal on various grounds.

2. Heard Mr. M. Pitchaiah, learned counsel for the appellants and Ms. P. Rajani, learned Government Pleader for Endowments appearing for the respondents.

3. The writ petition is filed seeking to declare proceedings in Rc.No.DPCELL/COE-25030(31)/15/2021, dated 12.06.2021 of the 2nd respondent and the proceedings dated 13.06.2021 of the 4th respondent, as arbitrary, illegal, unconstitutional and violative of Articles 14, 25 and 26 of the Constitution of India and for a consequential direction to the respondents to recognize the petitioners as permanent and temporary Peethadhipaths/ Mathadhipaths respectively of Sri Mad Virat Pothuluri Veera Bhrahmendra Swamy Mutt (hereinafter referred to as 'the Mutt'), Kandi Mallayapalli Village, Brahmamgari Matham Mandal, Y.S.R.Kadapa District.

4. Through proceedings dated 12.06.2021, impugned in the writ petition, the 2nd respondent / Special Commissioner of Endowments, appointed the 4th respondent / Assistant Commissioner of Endowments, Kadapa, as Fit person under Section 52 of the Andhra Pradesh Charitable and Hindu Religious Institution and Endowments Act, 1987 (hereinafter referred to as 'the Act') and by proceedings dated 13.06.2021, the 4th respondent called upon the Manager of the Mutt to handover all the records of movable and immovable properties of the Mutt to him, with immediate effect, without fail.

5. It is contended before the learned Single Judge that the 2nd petitioner / 2nd appellant is the widow of 11th Peethadhipathi of the said Mutt and the deceased Peethadhipathi nominated the 1st petitioner / 1st appellant who is the son of the 2nd petitioner as his successor Peethadhipathi on 01.10.2010 and the said nomination was intimated to the Dharmika Parishad / 3rd respondent . While stating that the Peethadhipathi passed away on 08.05.2021, it was submitted that the 1st petitioner had been nominated by the late Peethadhipathi as the person to be appointed as permanent Peethadhipathi through a Will executed on

10.11.2018 and that since the 1st petitioner was still a minor, as per the recitals in the Will, the 2nd petitioner would be a temporary Peethadhipathi till the 1st petitioner attains majority. It was agitated before the learned Single Judge that Section 52 of the Act, would apply only if there is a temporary vacancy or dispute in regard to right of succession in a temporary vacancy or where a Peethadhipathi is a minor and does not have a proper guardian. It was pointed out that none of such exigencies exist as the death of the Peethadhipathi has created a permanent vacancy and the 2nd petitioner would act on behalf of the 1st petitioner till he attains majority, and as per the language of the section, the dispute relating to succession would not be with regard to a permanent vacancy but relates to a temporary vacancy. It was also contended that the decision of Dharmika Parishad was not in terms of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Dharmika Parishad Rules, 2009 (for short 'the Rules') inasmuch as one of the members viz., the Executive Officer of Tirumala Tirupathi Devasthanam did not sign the resolution by way of circulation and in the absence of the same, the requirement of a unanimous decision has not been complied with. It is further urged that the definition of Commissioner as set out in Section 2 (6) of the Act does not include a Special Commissioner and the order dated 12.06.2021, impugned in the writ petition, issued by the Special Commissioner purportedly on behalf of the Dharmika Parishad is not sustainable in law.

6. The learned Single Judge after considering the submissions and perusing the materials on record at Para No.17 held as follows:

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.

7. Insofar as the contention with regard to the competency of the Special Commissioner acting as a member of Dharmika Parishad and issuing the proceedings impugned in the writ petition, the learned Single Judge left it open, since the learned Single Judge tested the validity of the resolution passed by the Dharmika Parishad in the light of the Rules and held that the resolution was not unanimous. The relevant finding of the learned Single Judge may be reproduced herein:

“ 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 members 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.”

8. In view of the aforementioned conclusions arrived at, the learned Single Judge allowed the writ petition and set aside the impugned proceedings / resolution dated 12.06.2021, while leaving it open to the Dharmika Parishad to reconsider and pass resolutions in accordance with the provisions of the Act and Rules.

9. At the outset, Mr. M. Pitchaiah, learned counsel for the appellants / petitioners submits that the appeal was filed since the consequential relief was not granted though the writ petition was allowed. He submits that the learned Single Judge having allowed the writ petition erred in not directing the respondents to recognize the petitioners as Peethadhipathis of the Mutt in question, in the light of the intention of the testator of the Will dated 10.11.2018. While drawing the attention of this Court to the communication dated 01.10.2010 addressed by the deceased Mathadhipathi, under certificate of posting to the Dharmika Parishad, wherein it was intimated by him that his minor son Govinda Swamy is nominated as next Matadhipathi after his demise, the learned counsel submits that in furtherance of his intention, the deceased Matadhipathi executed a Will dated 10.11.2018 declaring the 1st petitioner as his successor Peethadhipathi and as he is a minor, nominated the 2nd petitioner as temporary Peethadhipathi to manage the affairs of the Matadhipathi till the 1st petitioner attains majority. Initially, the learned counsel contended that Section 52 of the

Act comes into play in respect of issues pertaining to the office of the Matadhipathi but not with regard to the Peethadhipathi and therefore Section 52 of the Act has no application, but he could not draw the attention of this Court to any of the provisions under the Act or Rules laying the distinction between the Mathadhipathi and Peethadhipathi. However, he points out that as per Section 47 of the Act, Mathadhipathi means any person whether known as Mahanth or by any other name, in whom administration and management of a math or specific endowment attached to a math are vested. Though, he advanced further arguments to some extent with reference to the provisions of the Act while stating that a learned Single Judge had an occasion to deal with Sections 52, 53 and 54 of the Act, however submitted that as the learned Single Judge left the matter open to the Dharmika Parishad to reconsider and pass resolutions in accordance with Law, a direction may be issued to consider the claim of the petitioners. In this context, it may be appropriate to extract Section 52 of the Act, which reads as follows:

52. Filling of temporary vacancies in the office of the mathadhipathi :

1) Where a temporary vacancy occurs in the office of the mathadhipathi and there is a dispute in regard to the right of succession to such office, or where the mathadhipathi is a minor and has no guardian fit and willing to act as guardian, or where the mathadhipathi is under suspension under sub-section (3) of Section 51 the [Dharmika Parishad] shall, if he is satisfied after making an inquiry in this behalf that an arrangement for the administration of the math and its endowment or of the specific endowment, as the case may be, is necessary, make such arrangement as [it] thinks fit until the disability of the mathadhipathi ceases or another mathadhipathi succeeds to the office, as the case may be.

2) *In making any such arrangement, the [Dharmika Parishad] shall have due regard to the claims, if any, of the disciples of the math.*

3) *.....”*

10. A reading of the above provision of Law goes to show *inter alia* that where a temporary vacancy occurs in the office of Mathadhipathi and a dispute in regard to right of succession to such office arises, or the Mathadhipathi is a minor and has no guardian fit and willing to act as such etc., Dharmika Parishad is empowered to make arrangements for the administration of the Mutt, its endowment or of the specific endowment, after making enquiry.

Section 52 (2) of the Act provides that while making any such arrangement, the Dharmika Parishad shall have due regard to the claims, if any, of the disciples of the math/mutt.

Section 53 of the Act deals with filling of permanent vacancies in the office of mathadhipathi and provides thus:

1) Where a permanent vacancy occurs in the office of the Mathadhipathi, by reason of death or resignation or on account of his removal under Section 51 or otherwise the person next entitled to succeed according to the rule of succession laid down by the founder, or where no such rule is laid down, according to the usage or custom of the math, or where no such usage or custom exists according to the law of succession, for the time being in force, shall with the permission of the [Dharmika Parishad] succeed to the office of the Mathadhipathi.

2) A person for succession to the office of the mathadhipathi under sub-section (1) shall possess the following qualifications, namely:-

- a) basic knowledge of the Hindu Religion and Philosophy;*
- b) knowledge of the relevant scriptures and sampradaya to which*

- the math belongs;*
- c) capacity to impact the knowledge and preach the tenets of the math to the disciples;*
- d) religious temperament with implicit faith in discipline and practice;*
- and*
- e) unquestionable moral character.*

Section 54 of the Act provides for nomination of the Mathadhipathi and reads as follows:

- 1) Subject to the provisions of Section 53, a mathadhipathi may nominate his successor. The fact of such nomination shall be intimated to the Commissioner, within ninety days of such nomination and the [Dharmika Parishad] may recognize such nomination. A nomination shall not be complete unless it is recognized by the Commissioner. The conditions for recognition shall be such as may be prescribed.*
- 2) Where a Mathadhipathi fails to nominate his successor under subsection (1) or where there is no mathadhipathi, the [Dharmika Parishad] or any officer authorized by [it] shall after due publication convene a meeting with the mathadhipathis of other maths of the same sampradayam and the disciples of the math and recognize the person nominated in such meetings as a mathadhipathi subject to the provisions of this Act. The procedure for convening the meeting and method of publication shall be such as may be prescribed.*

11. As per the above said section, a Mathadhipathi may nominate his successor subject to the provisions of Section 53 of the Act and the fact of such nomination shall be intimated to the Dharmika Parishad, within 90 days of such nomination and the Dharmika Parishad may recognize such nomination. Section 54(1) of the Act also provides that a nomination shall not

be complete unless it is recognized by the Dharmika Parishad in terms of conditions for recognition as may be prescribed. Section 54 (2) of the Act deals with the situation where a Mathadhipathi fails to nominate his successor under sub section (1) of the Act or where there is no Mathadhipathi.

12. In the present case, there is a dispute with regard succession to the office of the Mathadhipathi and in the context of examining the same, the Dharmika Parishad passed the resolution dated 12.06.2021. The learned Single Judge, in the attending facts and circumstances of the case while opining that the exercise of power cannot be said to be without jurisdiction, set aside the resolution on the technical ground that 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.

13. The learned Single Judge further left it open to the Dharmika Parishad to reconsider and pass resolutions in accordance with the provisions of the Act and the Rules. Once the resolution is set aside on the sole ground as mentioned supra, the matter has to be reconsidered in accordance with the provisions of the Act and Rules. Under the said circumstances, the learned Single Judge is justified in not granting the direction to the respondents to recognize the petitioners as permanent and temporary Peethadhipathi / Mathadhipathi of the Mutt in question. Further, it is not a consequential relief, but a substantial relief which cannot be granted without determination of the petitioner's entitlement / rights in accordance with law. Therefore, the contention that the learned Single Judge erred in not granting the consequential direction to recognize the petitioners as permanent and

temporary Peethadhipathis deserves no acceptance and accordingly, the same is rejected.

14. Be that as it may, since the learned Single Judge left it open to the Dharmika Parishad to reconsider the matter and pass resolutions, this Court to meet the ends of justice is inclined to dispose of the appeal providing liberty to the appellants to put forth their claims before the Dharmika Parishad which in turn shall consider the same in the light of the provisions of the Act and the Rules framed there under, independently, without reference to any of the observations made by the learned Single Judge or by this Court and pass appropriate resolutions in accordance with the provisions of the Act and Rules. The Dharmika Parishad shall complete the above said exercise, after giving due opportunity to all the concerned, within a period of two months from the date of receipt of a copy of this order.

15. Accordingly, the writ appeal stands disposed of in the above terms. No order as to costs. Pending miscellaneous applications, if any, shall stand dismissed.

ARUP KUMAR GOSWAMI, CJ

NINALA JAYASURYA, J

BLV

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23rd day of September, 2021

BLV