

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION NO.1348 OF 2023

Between:

1. Paila Srinivasulu S/o Venugopal Rao, Aged 58 years,
Occ: Business, R/o H.No.24-5-121, Fatima Nagar, R E C,
Hanumakonda City and District.

...Petitioner(s)

AND

1. The State of Telangana,
Revenue (Endowments-II) Department, Secretariat, Hyderabad
Rep. by its Secretary, And 18 Others.

...Respondents

JUDGMENT PRONOUNCED ON: 31.03.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of
judgment

MUMMINENI SUDHEER KUMAR, J

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

+WRIT PETITION NO.1348 OF 2023

%Dated 31.03.2023

1. Paila Srinivasulu S/o Venugopal Rao, Aged 58 years,
Occ: Business, R/o H.No.24-5-121, Fatima Nagar, R E C,
Hanumakonda City and District.

...Petitioner(s)

AND

\$ 1. The State of Telangana,
Revenue (Endowments-II) Department, Secretariat, Hyderabad,
Rep. by its Secretary, And 18 Others.

...Respondents

! Counsel for Petitioner(s): Sri M.Vidya Sagar

^ Counsel for Respondents:

1. Sri S.Venkata Ramana, learned Government Pleader for Endowments,
2. Sri J.R.Manohar Rao, learned Standing Counsel for respondent No.3,
3. Sri Srinivasa Murthy Cheedella, learned counsel for respondent Nos.5 to 19.

< GIST :

> HEAD NOTE :

? Cases referred:

1. 2008 (4) ALD 225 (DB)
2. 2011 (3) ALD 683 (DB)
3. AIR 1961 SC 82

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION No.1348 of 2023

ORDER:

Heard Sri M.Vidya Sagar, learned counsel for the petitioner, Sri S.Venkata Ramana, learned Government Pleader for Endowments, Sri J.R.Manohar Rao, learned Standing Counsel for respondent No.3 and Sri Srinivasa Murthy Cheedella, learned counsel appearing for respondent Nos.5 to 19.

2. This Writ Petition is filed assailing G.O.Rt.No.11, Revenue (Endowment-II) Department, dated 10.01.2023, wherein the constitution of Non-Hereditary Trust Board took place for respondent No.3-Temple appointing respondent Nos.5 to 19 as members of the said Trust Board, mainly on the ground that the notification calling for applications as required under Section 17(3) of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act, 1987'), read with Rule-4(1) of the Rules framed under G.O.Ms.No.258, Revenue (Endowment-I), dated 31.03.1988, is required to be issued by the Authority competent to appoint the trustees under Section 15 of the Act, 1987, but not by any other authority.

3. It is the case of the petitioner that respondent No.3-Temple is notified under Section 6(a) of the Act, 1987, and it

is the Government, which is competent for appointment of Board of Trustees in respect of respondent No.3-Temple under Rule-4(1) of the Rules issued under G.O.Ms.No.258, dated 31.03.1988, and the very same Authority, which is competent to appoint Board of Trustees is required to cause publication of notification calling for applications for the said purpose, but, in the instant case, instead of the Government issuing the notification calling for applications for appointment of Board of Trustees for respondent No.3-Temple, respondent No.2 issued the said notification and the same was published in the newspapers on 15.12.2022. It is further contended by learned counsel for the petitioner that, in the judgment of a Division Bench of this Court in **S.V.Sudhakara Rao v. Government of Andhra Pradesh and others**¹, it was held that it is mandatory that the competent Authority to appoint the Board of Trustees is required to cause publication of the notification also calling for the applications for the said purpose.

4. This Court, having considered the said judgment of the learned Division Bench passed an interim order on 11.01.2023 suspending the operation of the impugned G.O. Respondent Nos.3 and 4 filed counter affidavit and respondent Nos.5 to 19 also filed a separate counter affidavit.

¹2008 (4) ALD 225 (DB)

5. From a perusal of the said counter affidavit and the material filed along with the respective counter affidavits, it is noticed that respondent No.1 issued a Memo No.40843/Endts.II/A1/2022, dated 06.12.2022 in exercise of power under sub-section 1 of Section 15 of the Act, 1987, read with sub Rule 1 of Rule 4 of the Appointment of the Trustees Rules, 1987, inviting applications in Form-II from the interested persons for the constitution of non-hereditary Trust Board to respondent No.3-Temple and the same was notified in Form-1. Having issued the said Form-1, the Government required respondent No.2 to take necessary action for causing publication of the said notification in the newspapers. Accordingly, the said notification was published on 15.12.2022 in the newspapers. This factum of issuing the Memo, dated 06.12.2022, along with Form-I by the Government is not disputed by any of the parties to the Writ Petition.

6. It is also brought to the notice of this Court by the learned counsel appearing for the respondents that the judgment of learned Division Bench in the case of **S.V.Sudhakara Rao v. Government of Andhra Pradesh and others** (1 supra) was considered by another learned Division Bench of this Court in the case of **Yelamarthi Sarath Kumar v. State of Andhra Pradesh**

and others² and was not followed the **S.V.Sudhakara Rao v. Government of Andhra Pradesh and others** (1 supra) case and the publication of notification by Authority other than the competent Authority to calling for appointment of Non-Hereditary Trust Board was upheld in the said case. This court has carefully considered the judgment reported in the case of **Yelamarthi Sarath Kumar v. State of Andhra Pradesh and others** (2 supra).

7. The learned Division Bench of this Court in **Yelamarthi Sarath Kumar** (2 supra), having considered the case of **S.V.Sudhakara Rao v. Government of Andhra Pradesh and others** (1 supra), has been pleased to hold as under:-

“From the judgment of the Supreme Court, in *J.Y. Kondala Rao's* case (supra), it is evident that "causing publication" is a ministerial act which the Government need not, by itself, discharge and can direct that it be discharged by a subordinate officer. As long as the notice in Form 1 is issued by the Government, the ministerial act of "causing publication" can be discharged by any other subordinate officer or authority.

The opinion of the Division Bench, in *S.V. Sudhakara Rao's* case (Supra), was rendered in ignorance of the judgment of the Supreme Court in *J.Y. Kondala Rao's* case (supra). It needs no emphasis that it is the judgment of the Supreme Court, in *J.y. Kondala Rao's* case (supra), which binds us notwithstanding the Division Bench judgment of this Court in *S.V. Sudhakara Rao's case (supra).*”

8. The learned Division Bench in the case of **Yelamarthi Sarath Kumar** (2 supra) has discussed the issue in elaborate and by following the law laid down by the Hon’ble Apex Court in the

² 2011 (3) ALD 683 (DB)

case of **J.Y.Kondala Rao v. Andhra Pradesh State Road Transportation and Corporation**³, has impliedly overruled the judgment in **S.V.Sudhakara Rao v. Government of Andhra Pradesh and others** (1 supra) and concluded that the act of publishing a notification calling for applications for appointment of Board of Trustees under Section 15 of the Act, 1987, by an Authority other than the competent Authority to appoint Board of Trustees is only a ministerial act and once Form-1 was issued by the competent authority that would satisfy the requirement of issuing notification by the competent Authority and the rest of the facts in receiving applications and processing the same for final consideration by the competent Authority would suffice in complying with the requirements of the law. In the light of the judgment in the case of **Yelamarthi Sarath Kumar v. State of Andhra Pradesh and others** (2 supra) and the observations made by the learned Division Bench in the said case, this Court is of the considered view that the judgment of learned Division Bench in the case of **S.V.Sudhakara Rao v. Government of Andhra Pradesh and others** (1 supra), cannot be said to be good law any longer.

9. In view of the undisputed fact that Form-1 was issued by the Government in the instant case, which is the competent

³ AIR 1961 SC 82

Authority to appoint Board of Trustees for respondent No.3-Temple, the act of publishing the notification calling for applications in the newspapers by the Authority other than the Government cannot be a ground to interfere with the impugned G.O. Therefore, this ground raised by the learned counsel for the petitioner fails.

10. The other ground raised by the learned counsel for the petitioner is that, the official respondents have acted as per the letter addressed by the local Member of Legislative Assembly (for short 'MLA') to respondent No.4 herein and the persons who are named in the said letter of the local MLA are only appointed as Board of Trustees through the impugned G.O is concerned, the respondents in their counter affidavit have denied of having received of any such letter by the Government, which issued the impugned G.O and also contended that there is no such letter received by respondent No.1.

11. A perusal of the said letter, which is placed on record by the petitioner, shows that the same was addressed to respondent No.4 herein, who is not the competent Authority to appoint the Board of Trustees. Even according to learned counsel for the petitioner, there is no such letter that was addressed to the Government, which issued the impugned G.O. Further, from a

perusal of the record that is placed before this Court also there is no such consideration of the alleged letter, dated 19.12.2022 of the local MLA by the Government while issuing the impugned G.O. Further, except making a bold allegation that the respondents have acted at the instance of local MLA in appointing the Board of Trustees through the impugned G.O no specific *mala fides* are attributed to any of the respondents nor the said local MLA is made party to this Writ Petition. In the absence of the same, this Court is not inclined go to the said aspect in detail. Therefore, this ground of attack to the impugned G.O also fails.

12. The other objection raised by the learned counsel for the petitioner as against respondent No.5 contending that respondent No.5 is acting as 'Oggu Poojari' of respondent No.3-Temple and receiving a remuneration from respondent No.3-Temple on Festivals and other occasions and thereby, he is disqualified under Section 19 (1) (c) of the Act, 1987, is concerned, the said averment is denied by the respondents in their counter affidavit filed stating that respondent No.5 is not an 'Oggu Poojari' at all of respondent No.3-Temple and the father of respondent No.5 was acting as 'Oggu Poojari'. Except making an allegation in that regard no other material is placed before this Court by the petitioner in support

thereof. In view of the same, there is no such disqualification incurred by respondent No.5. Therefore this ground also fails.

13. In addition to the above, learned counsel for the petitioner also contended that the police verification reports that are filed along with the counter affidavit filed by the respondents are dated 30.11.2022, in respect of respondent Nos.5 to 19 and all such police verification reports are received much prior to the date of notification and thus, everything is preplanned and even before issuing notification, the official respondents have concluded that respondent Nos.5 to 19 herein should be appointed as Non-Hereditary Trustees. Insofar as this aspect is concerned, a perusal of the record indicates that the said police verification certificates are produced by respondent Nos.5 to 19 along with their applications in Form-II and as such merely basing upon the fact of obtaining such certificates prior to the date of Notification it cannot be said that the respondents have decided about appointment of respondent Nos.5 to 19 even prior to issuance of notification.

14. Even otherwise, it is not the case of the petitioner that he is one of the applicants who made an application seeking consideration of his case for being appointed as Trustee of respondent No.3-Temple. Further, it is only respondent Nos.5 to 19 have made application in response to the Notification

dated 15.12.2022. Nowhere in the entire affidavit the petitioner has disclosed his locus to question the impugned G.O and as to how the petitioner is affected by issuance of the impugned G.O. In a way the relief sought in this Writ Petition is in the nature of the public interest and the petitioner, instead of following the procedure that is required to be followed in the matter of the filing Public Interest Litigation, has filed this Writ Petition, though the petitioner is aggrieved by the impugned G.O individually. For this reason also, this Court is not inclined to entertain the Writ Petition.

15. In the light of the above, this court does not find any merit in the Writ Petition and the same is accordingly dismissed.

As a sequel, miscellaneous petitions, pending if any in this Writ Petition, shall stand dismissed. No costs.

MUMMINENI SUDHEER KUMAR, J

Date:31.03.2023

NDS

::12::

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION No.1348 of 2023

Date :31.03.2023

NDS