

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

**WRIT PETITION No.21805 of 2021**

**ORDER:-**

The petitioner is a founder family member of the 3<sup>rd</sup> respondent-temple. This temple owns Ac.6.00 cents of land which fetches an income of about Rs.1 lakh per annum. This temple had been registered under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act, 1987'). It is the case of the petitioner that on account of the said registration, there are various liabilities cast on the temple, by way of making payments to the Endowments Department, which are effectively taking away the income of the temple. The petitioner relying upon the observations of the Hon'ble Supreme Court in **A.S.Narayana Deekshithulu vs. State of A.P and Others**<sup>1</sup>., and **Sri Divi Kodandarama Sarma and others vs. State of Andhra Pradesh and others**<sup>2</sup>, contends that temples which have an income of less than Rs.5 lakhs are exempt from all the regulations set out in the Endowments Act including the payment of various contributions to the Endowments Department and also salaries to the Executive Officer.

2. On the basis of these contentions, the petitioner seeks a Writ of Mandamus declaring the inaction of the 1<sup>st</sup> respondent in notifying and publishing in the Official Gazette,

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<sup>1</sup> (1996) 9 SCC 548

<sup>2</sup> (1997) 6 SCC 189

orders of exemption, under Section 154 of the Act, 1987 in relation to all temples whose annual income is less than Rs. 5 lakhs in the State of Andhra Pradesh and for these temples to be managed by the respective founder family members/persons in management.

3. Sri V.Venu Gopala Rao learned counsel, appearing for the petitioner has taken this Court through the aforesaid judgments as well as the report of the committee to contend that there are binding directions of the Hon'ble Supreme Court, to the State Government, to exempt all temples whose income is less than Rs.5 lakhs from the rigors of the provisions of the Endowments Act, 1987.

4. The learned Government Pleader would submit that the figure of Rs.5 lakhs is a typographical error, in the judgment, and it is only temples which have an income of less than Rs.50,000/- which have to be granted such an exemption. She further submits that the 2<sup>nd</sup> proviso to Section 29(1) of the Act provides for appointment of an executive officer, even if the income is less than Rs.2 lakhs per annum if the temple has substantial property. She would contend that this statutory provision clearly envisages departmental control over temples which have an income of less than two lakh rupees also and there cannot be any omnibus exemption to all temples whose income is less than rupees five lakhs, as contended by the petitioner, or rupees two lakhs as stipulated in Section 29 of the Act.

**CONSIDERATION OF THE COURT:**

5. Before going into the issues arising in this case, it is necessary to briefly review the circumstances in which this issue has come up. The regulation of Endowment Institutions in the erstwhile Madras province/state commenced with Act 20 of 1863 and went through the enactment of various laws from time to time. It would suffice, for the purposes of this case, to recognize that the Madras Hindu Religious and Charitable Endowments Act, 1951 was in force when the state of Andhra came into existence. After the formation of the state of Andhra Pradesh, the 1951 Act was replaced by The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1966. After the passage of a few decades, a commission, headed by a former chief justice of this court, was appointed to go into the working of the 1966 Act. This commission submitted its report suggesting various changes in the existing law. The State of Andhra Pradesh, on the basis of the said recommendations, repealed the 1966 Act and replaced it with the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1987 (hereinafter referred to as the Act).

6. The Act brought in certain drastic departures and innovations in the administration of endowments and in the rights and liabilities of various stake holders. The relative merits and demerits of these innovations/departures are still being debated. The primary change sought to be brought into

the whole system was the abolition of hereditary rights of Trustees, Archakas, Mirasidars and various other religious and non religious office holders of religious institutions. There were other drastic changes. As these are not the subject of this Writ Petition, they are not being mentioned.

7. The scheme of the Act was to abolish all hereditary positions, rights and liabilities of various holders of offices in the administration of religious institutions and replace these office holders with paid employees. Section 16 of the Act abolished the office of hereditary Trustees. Section 34 of the Act abolished the hereditary rights of Mirasidars, Archakas and other office holders and servants. Section 35 of the Act stipulates that all office bearers shall be appointed by the Trustee with prior permission of the competent authority or directly by the officers of the Endowment department, depending upon the income of the religious institution. It also abolished all forms of payment or income to the office holders, including the Archakas, except the salary paid to them as per scale. Section 144 abolished all shares in Hundis and other rusums, including shares in the income from the lands of the religious institutions which were earlier being given to the office holders including Archakas.

8. The said Act, and more specifically sections 16, 34 35, 37, 39 and 144 were challenged before the courts and the litigation culminated in the decision of the Hon'ble Supreme

Court in the case of **A.S. Narayana Deekshitulu v. State of A.P.**,<sup>3</sup>.

The Hon'ble Supreme Court, while upholding the said Act, was also cognizant of the fact that such a drastic change was not taking into account, the practical problems that would be faced by Temples which would not have the financial ability to make the transition to the new regime introduced by the Act. The Hon'ble Supreme Court issued further directions in this regard with the following observations:

**132.** In Andhra Pradesh there are as many as 32,201 temples out of which 7761 temples are assessable institutions; the remaining 24,440 temples have income of less than Rs 1000 per annum, only 582 out of them have income of more than Rs 10,000 per annum. Only around 8 temples have income of more than Rs 20,00,000 per annum. All the archakas or employees in these categories of 24,440 small temples would be deprived of their livelihood by abolition of their hereditary rights and introduction of graded scales of pay. This information has been furnished in the written arguments submitted by Shri Markandeya but we did not have the occasion to have them verified during the course of hearing. It would be seen that the principles in fixing the scales of pay and method of payment of salary introduced by the rules are required to be adjudged. In the absence of any material it is difficult for us to give any finding in that behalf. Suffice it to state that liberty is given to place those necessary and material evidence before the Government which would constitute a committee consisting of Deputy Secretary, Finance Department, Joint Secretary to the Government, Revenue (Endowments

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<sup>3</sup> (1996) 9 SCC 548 at page 611

Department) and Joint Commissioner, Endowment Department. The Committee would go into the question to rationalise the pay scales of all the archakas in different temples and the modality for payment of salary to them. After approval of the rules by the State Government, the respondents should place the same before the Court for further approval.

**133.** Though we have upheld abolition of hereditary right to appointment as an archaka or other office-holders, the evidence from Vaikhanasa literature and other material indicate that archaka should bestow his total dedication to the Deity in the performance of daily rituals; at the same time, he and his family members must be kept in comfort. The property endowed for his services or the income derived from the offerings or the payment of salary, if any, is identified as a source for his living in comfort. The State exercising its secular power regulates appointment of archakas, as upheld hereinbefore; equally, he, along with his family, is required to be kept with daily comfort so that he would continue to dedicate himself to perform the ritual worship of the Deity. As indicated earlier, the State is required to determine his service conditions, scale of pay and other emoluments according to the grade of the temple in which he works and to regulate the period of duty and of service. That apart, welfare measures in addition should be initiated as a measure of social welfare to the archakas and other employees of the temple and pandits working in the temples and under the supervision of the Commissioner. Therefore, the State should come forward with a scheme to provide the archakas, other employees and their family members like suitable accommodation, education by way of refresher courses and courses in

Agamas in the respective region, medical facilities, educational facilities to their children, loans for construction of their own houses, and wherever accommodation in the temple is available letting the same to them on reasonable rent, group insurance scheme, unforeseen contingencies like accident, death, etc., rehabilitation of the widow or educated unemployed youth or such other measures as may be incidental and part of economic welfare. The extent of the similar facilities already existing and provided for may be excluded from the proposed scheme. For other items appropriate scheme should be formulated.

**134.** In that behalf the State Government is directed to constitute a committee consisting of the Additional Commissioner, Endowments Department, a Joint Secretary/Deputy Secretary (Endowment), Revenue Department; two representatives of the archakas to be nominated by their associations and one representative of other officers/servants of the temples. It would be open to the representatives of the archakas etc. to place their views and material before the Committee in the formulation of the scheme. The Committee will undertake an in-depth study into the schemes and formulate the same. After the scheme is formulated, the Government would take a decision thereon and would place the duly approved scheme before this Court within six months from today for further action thereon.

9. Pursuant to this direction, the State of Andhra Pradesh constituted a committee to go into these issues and submit a report. The committee, after conducting an exercise in this regard, submitted a report, dated 4.10.1996, making various recommendations. Some of these recommendations

were accepted by the Government and some were modified. The recommendations of the Committee and the views of the government on these recommendations were placed before the Hon'ble Supreme Court, which passed orders in **Sri Divi Kodandarama Sarma and others vs. State of Andhra Pradesh and others**<sup>4</sup>.

10. The sum and substance of the recommendations placed before the Hon'ble Supreme Court, which were permitted to be brought into force, are that, the State is not interested in taking up management and regulation of the affairs of temples with low income and would prefer these temples to look after themselves. The State would only take up management of those temples which have substantial income. The Hon'ble Supreme Court accepted this stand of the Government in the following manner:

**3.** Section 6 of the Act classifies the charitable or religious institutions and endowments and other mutts on the basis of the income and its calculation under Section 65. Section 6(a) institutions are those whose income exceeds Rs 5 lakhs and above per annum; Section 6(b) institutions are those whose income exceeds Rs 50,000 but is less than Rs 5 lakhs; and Section 6(c) institutions are other than those covered under clauses (a) and (b). The Committee has gone into this aspect, in the light of the directions issued and has recommended that the temples whose annual income is less than Rs 5 lakhs may be allowed to be managed by the respective managements of the temples etc. but be

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<sup>4</sup> (1997) 6 SCC 189



supervised by the Department as is being now done so that the managements of such temples may be allowed to pay such remuneration to the Archakas. In lieu of salary, the properties given to them may be retained by the Archakas for enjoyment subject to rendering service depending upon the income of the respective temples as per the prevailing circumstances. We are informed that a sizeable part of the temples would come within that category and, therefore, the Government has accepted the classification with the rider: "Temple with such abnormally low income may be left to fend for themselves." The recommendation of the Committee has thus been accepted by the Government. Under Section 154 of the Act, the Government by a notification may exempt from the purview of any of the provisions of the Act or any of the rules made thereunder (a) any charitable institutions or endowments administration of which was or is for the time being vested in the Government either directly or through the Committee or a Treasurer (Endowment) appointed for the purpose or the Official Trustees or the Administrator General etc. Any institution or endowment may be exempted and may likewise vary or cancel such exemption. In view of the above provision, it would be open to the State Government to issue a notification published in the Official Gazette exempting such institutions subject to the above recommendation and such orders as may be mentioned therein or deemed appropriate.

11. Sri Venugopal Rao relies on this observation of the Hon'ble Supreme Court, to contend that a duty is cast on the government to exempt all temples having an income of less than rupees five lakhs. This is disputed by the Learned Government Pleader, who contends that the figure of rupees

five lakhs mentioned in the above passage is a typographical error. She relies on the succeeding passages of the judgement to contend that the direction of the Hon'ble Supreme Court was to exempt all temples below Rs. 50,0000 per annum. While the contention of the learned Government pleader may merit consideration, this court cannot interpret the judgement of the Hon'ble Supreme Court to hold that there was a typographical error. Any such finding would amount to a modification of the order of the Hon'ble Supreme Court and this court must decline to go into this question.

12. The matter does not rest there. The subsequent amendments to Section 144 of the Act need to be taken into account. This Section abolished the right of any office holder including Trustees, Dharmakarthas, Mutawallis, Archakas or Mirasidars to a share in the income of the temple obtained from the donations or offerings made to the religious institution or the income from the lands owned by the religious institutions or any other income as remuneration for services rendered by such office holders. This meant that the office holders would cease to be hereditary sharers in the fortunes of the religious institutions and become paid employees of the institution. As temples with low incomes would not be able to pay proper salaries to these office holders, the Hon'ble Supreme Court had directed that, for such temples, the earlier system could be followed. Effectively, the Hon'ble Supreme court, while upholding the abolition of

such practices, permitted these practices to continue wherever it was not convenient for the State to take over management of low income temples.

13. This Supreme Court mandated system found legislative expression in Act 33 of 2007, with effect from 03.01.2008, which added two provisos to Section 144. The first proviso made it applicable only to institutions whose annual income exceeds Rs.5 lakhs. The second proviso also permitted the commissioner of Endowments to frame schemes of payment of emoluments to Archakas in any of the institutions, subject to the satisfaction of the Commissioner that such a scheme is necessary for that institution.

14. The above amendment is an indication of the fact that the state had taken cognizance of the fall in the value of the rupee and the need to enhance the cut off point, in terms of annual income, of those institutions which require to be placed outside the purview of section 144 of the Act. The same principle would apply to temples which need to be exempted from the provisions of the Act itself, in line with the policy of the state to leave temples below a certain income limit to their own devices. In view of the above monetary limits fixed in the above amendment, the government has implicitly accepted the fact that Temples with an annual income which is less than Rs. 5 lakhs would have to look after themselves and the earlier system should be allowed to go on in these temples and

institutions as these temples do not have the financial capacity to give scales of pay to their employees.

15. Another aspect of the matter is the effect of payment of mandatory contributions to the endowment department over the income of the temples. The learned Government pleader has given the details of the contributions collected from the temples and other religious institutions, which are as follows:

The assessable income, as calculated under section 65 of the Act, is more or less the actual income of the temple or religious institution. Temples and religious institutions, with an income of more than Rs. 2 lakhs per annum are required to pay 18.5% of their income to the endowment department. Temples and religious institutions with an income of more than Rs.20 lakhs are required to pay 21.5 % of their income. No contributions are collected from temples with an income below Rs. 2 lakhs, on account of the exemption granted under G.O. Rt. No. 375, dated 01-10-2015.

16. The statistics provided by Sri V. Venugopal Rao show that there are 1440 temples in the State, registered with the endowments department, with an income between Rs.2 lakhs and Rs. 5 lakhs. These Temples are paying between Rs. 37,000/- and Rs. 92,500/- per annum, to the endowments department as mandatory contributions. Diversion of such amounts would clearly affect the financial strength and stability of these temples. By way of an example, if we were to

take the case of a temple having an annual income of Rs. 2,00,001/-, the temple would have to pay Rs. 37,000/- to the endowments department. This would leave an amount of Rs. 1, 63,000/- in the hands of the Temple to defray its entire annual expenditure. The minimum staff needed for a temple would be an Archaka, a watchman and a sweeper/cleaning person. Apart from this the expenditure for Dhupa, Deepa Naivedyam would also have to be met. In today's world, such an amount is clearly inadequate. There is every need to reduce this burden on temples having an income of less than Rs. 5 lakhs.

17. On a review of all these facts, there is every need for the State government to reconsider its decision of granting exemption to only those temples having an annual income of less than Rs. 2 lakhs and to increase the limit to Rs.5 lakhs.

18. Accordingly, this Writ Petition is disposed of with a direction to the State government to consider the grant of exemption to temples having an annual income of less than Rs.5 lakhs from the provisions of the Act including the requirement to pay the mandatory contributions mentioned above, in the light of the directions of the Hon'ble Supreme court in **Sri Divi Kodandarama Sarma and others vs. State of Andhra Pradesh and others**<sup>5</sup>. This exercise shall be conducted within a period of four months from the date of receipt of this order.

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<sup>5</sup> (1997) 6 SCC 189

Miscellaneous petitions, pending if any, shall stand closed.

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**JUSTICE R.RAGHUNANDAN RAO**

Date : 05-05-2022

RJS

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

**WRIT PETITION No.21805 of 2021**

**Date : 05.05.2022**

RJS

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

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**W.P.No.21805 of 2021**

**Between:**

Allaparthi Venkata Chalapathi Rao,  
S/o.A.Nageswara Rao, aged 65 years,  
Occ:Founder Family Member, R/o.Allaparru Village,  
Nagaram Mandal, Guntur District.

**... Petitioner**

And

§ 1. The State of Andhra Pradesh, rep. by its Principal Secretary,  
Revenue (Endowments), Department, Secretariat Buildings, Velagapudi,  
Guntur District.

2. The Commissioner, Endowments Department, Andhra Pradesh,  
Gollapudi, Vijayawada, Krishna District.

3. Sri Alaparthamma Temple, Alaparru Village, Nagaram Mandal, Guntur  
District. Rep.by its Executive Officer.

4. The Executive Officer, Sri Alaparthamma Temple, Alaparru Village,  
Nagaram Mandal, Guntur District.

**... Respondents**

**Date of Judgment pronounced on : 05-05-2022**

**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.21805 of 2021**

**% Dated: 05-05-2022**

Allaparthi Venkata Chalapathi Rao,  
S/o.A.Nageswara Rao, aged 65 years,  
Occ:Founder Family Member, R/o.Allaparru Village,  
Nagaram Mandal, Guntur District.

**... Petitioner**

And

\$ 1. The State of Andhra Pradesh, rep. by its Principal Secretary,  
Revenue (Endowments), Department, Secretariat Buildings, Velagapudi,  
Guntur District.

2. The Commissioner, Endowments Department, Andhra Pradesh,  
Gollapudi, Vijayawada, Krishna District.

3. Sri Alaparthamma Temple, Alaparru Village, Nagaram Mandal, Guntur  
District. Rep.by its Executive Officer.

4. The Executive Officer, Sri Alaparthamma Temple, Alaparru Village,  
Nagaram Mandal, Guntur District.

**... Respondents**

! Counsel for petitioner : V.Venu Gopala Rao

^Counsel for Respondents 1 & 2 : G.P. for Endowments

^Counsel for Respondent 3 & 4 : K.Madhava Reddy

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? Cases referred:

<sup>1</sup> (1996) 9 SCC 548

<sup>2</sup>. (1997) 6 SCC 189

<sup>3</sup>.(1996) 9 SCC 548 at page 611

<sup>4</sup>. (1997) 6 SCC 189

<sup>5</sup>. (1997) 6 SCC 189