State of Andhra Pradesh

Vs

S. M. K. Parasurama Gurukul

Civil Appeal No. 796 of 1971

(D.G. Palekar, A. Alagiriswami JJ)

03.05.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal by the State of Andhra Pradesh against the judgment of the Division Bench of the High Court of Andhra Pradesh holding that the appointment of nine trustees to the Kalahastiswara Swami Temple in the town of Kalahasti in the Chittoor district of Andhra Pradesh was liable to be quashed on the short ground that the impugned order was not a speaking order. For this purpose the Bench relied upon its own judgment in writ Petition. No. 2536 of 1967 that the functionaries under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966, though administrative tribunals, are exercising quasi-judicial functions in appointing non-hereditary trustees. By the time this appeal came up for hearing the period of office of the trustee, whose appointment was challenged by the respondent, was over and the respondent, therefore, contended that the appeal should be dismissed as having become infructuous. On behalf of the State of Andhra Pradesh it was urged that the question is one of considerable importance to it had that appointment of trustees to a number of institutions is being held up because of the judgment of the Andhra Pradesh High Court. We, therefore, indicated that we would be prepared to hear the appeal but would make it conditional on the respondent getting his cost form the appellant irrespective of the result. The State of Andhra Pradesh has no objection.

2. It appears that the respondent has also filed a suit claiming that the temple in question is either a private family temple not falling within the definition of the term temple in the Act or at least that he is a hereditary trustee thereof. That suit is still pending. The decision in this appeal, therefore, simply proceeds on the basis that the respondent was one of the person who had applied to be appointed as a trustee of the temple in question. We are, therefore, concerned only with the question whether in appointing trustees under Section 15(1)(a) of the Act the Government acts as a quasi-judicial tribunal. That section provides that in respect of a charitable or religious institution or endowment included in the list published under clause (a) of Section 6 (there is no dispute that the temple in question falls under it) whose annual income exceeds rupees two lakhs, the Government may, in the case where there is a hereditary trustee, and shall in any other case, constitute a Board of Trustees consisting of not less that seven and not more than eleven persons appointed by them. This Court has held in K. A. Samajam v. Commr. H.R. & C.E. ((1971) 2 SCR 878 : (1970) 3 SCC 359.), dealing with this very Section 15, that the power to appoint non-hereditary trustees or executive officers under Sections 15 and 27, even where three is already a hereditary trustee or trustee, notwithstanding that there is no mis-management, is only for the purpose of ensuring better and efficient administration and management of the institution or endowment. It also pointed out that in making the appointment of trustees it has been enjoined that due regard should be given to the

religious denomination or any section thereof to which the institution belongs or the endowment is made and the wishes of the founder and held this section valid. While Mr. Subba Rao appearing for the respondent wanted to contest the correctness of this decision and urged that is should be re-considered, we indicated that we do not propose to do so and that if and when he succeeds in the suit he is said to have filed in establishing that he is an hereditary trustee it may be open to him to urge this point at the appropriate time. We, there, proceed on the basis that Section 15 is valid.

3. The test for determining whether a decision is an administrative one or quasi-judicial has been clearly specified in a number of decisions of this Court. Essentially, they are three in number :

(1) There must be a lis between the two parties;

(2) the opinion should be formed on the objective satisfaction and should not depend upon the subjective satisfaction of the tribunal; and

(3) there must be a duty to act judicially.

In Province of Bombay v. K. S. Advani and Others (1950 SCR 621 : AIR 1950 SCJ 451.). Kania, C.J. with whom Patanjali Sastri, J. agreed, said :

> "The respondent's argument that whenever there is a determination of a fact which affects the rights of parties, the decisions is quasi-judicial, does not appear to be sound."

Further on the learned Chief Justice said :

> "It is broadly stated that when the fact has to be determined by an objective test and when that decision affects rights of someone, the decision or act is quasi-judicial. This last statement overlooks the aspect that every decision of the executive generally is a decision of fact and in most cases affects the rights of someone or the other. Because an executive authority has to determine certain objective facts as a preliminary step in the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari."

To the like effect is the observation of Fazl Ali, J. in the same case :

> "The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference, and the real test is : Is there any duty to decide judicially ? As I have already said, there is nothing in the Ordinance to show that the Provincial Government has to decide the existence of a public purpose judicially or quasi-judicially."

Dealing with the essential characteristics of a quasi-judicial act as opposed to an administrative act, Das, J. (as he then was) observed :

"..... the two kinds of acts have may common features. Thus a person entrusted to do in administrative act has often to determine questions of fact of enable him to exercise his power. He has to consider facts and circumstances and to weight pros and cons in his mind before the makes up his mind to exercise his power just as a person exercising a judicial or quasi-judicial function has to do. Both have to act in good faith. A good and valid administrative or executive act binds the subject and affects his rights or imposes a liability on him just as effectively as a quasi-judicial act does. The exercise of an administrative or executive act may well be and is frequently made dependent by the Legislature upon a condition or contingency which may involve a question of fact, but the question of fulfilment of which may, nevertheless be left to the subjective opinion or satisfaction of the executive authority, as was done in the several Ordinances, regulations and enactments considered land construed in the several cases referred to above..... The real test which distinguishes a quasi-judicial act from an administrative act is..... the duty to act judicially. .....

What are the principles to be deduced from the two lines of cases I have referred to ? The principles, as I apprehend them, are :

(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quash-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

The observations in Advani's case (supra) were quoted with approval by Das, C.J. in Shri Radeshyam Khare and Another v. The State of Madhya Pradesh and Others (1959 SCR 1440 : AIR 1959 SC 107 : 1959 SCJ 6.). S. K. Das, J. who in general agree with the learned Chief Justice in that case observed :

"To get to the bottom of the distinction, we must go a little deeper into the content of the expression 'duty to act judicially'. As has been repeated so often, the question may arise in widely differing circumstances and a precise, clear-cut or exhaustive definition of the expression is not possible. But in decisions dealing with the question several tests have been laid down; for example -

(i) whether there is a lis inter parties;

(ii) whether there is a claim (or proposition) and an opposition;

(iii) whether the decision is to be founded on the taking of evidence or an affidavits;

(iv) whether the decision is actuated in whole or in part by questions of policy or expediency, and if so, whether is arriving at the decision, the statutory body has to consider proposals and objections and evidence; and

(v) whether in arriving at its decision, the statutory body has only to consider policy an expediency and at no stage has before it any form of lis.

Subba Rao, J., who differed from the majority, after referring to the formulation of the principles in Advani's case (supra) earlier referred to, as unexceptionable and also to the discussion in R. v. Manchester Legal Aid Committee, stated the principles in his own words thus :

> "Every act of an administrative authority is not an administrative or ministerial act. The provisions of a statute may enjoin on an administrative authority to act administratively or to act judicially or to act in part administratively and in part judicially. If policy and expediency are the guiding factors in part or in whole throughout the entire process culminating in the final decision, it is an obvious case of administrative act. On the other hand, if the statute expressly imposes a duty on the administrative body to act judicially, it is again a clear case of a judicial act. Between the two there are many acts, the determination of whose character creates difficult problems for the court. There may be cases where at one stage of the process the said body may have to act judicially and at another stage ministerially. The rule can be broadly stated thus : The duty to act judicially may not be expressly conferred but may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred or the duty imposed on the authority and other indicia afforded by the statute. In short, a duty to act judicially may arise in widely different circumstances and it is not possible or advisable to lay down a hard and fast rule or an inexorable rule of guidance."

In Gullapalli Nageswara Rao and Others v. Andhra Pradesh State Board Transport Corporation and Another (1959 Supp 1 SCR 319 : AIR 1959 SC 308 : 1959 SCJ 967.). Subba Rao, J., after referring to the various decisions on this subject held :

> "..... whether an administrative tribunal has as duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder, and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or, to put it in other words, if there is a lis, ordinarily there will be a duty on the part of the said authority to act judicially."

4. It is hardly necessary to say that in this case the respondent had no right to be appointed a trustee; nor had any of the other persons who were appointed trustees. There was no question of a proposition and an opposition. There is, therefore, no question of any lis. Nor is here any question of contest between the authority proposing to do the act and the subject opposing it. Such a question

will arise only if any right of the subject is affected. None of the other tests laid down above are satisfied in this case.

5. An examination of the provisions of the statute, which is an Act to consolidate and amend the law relating to the administration and Government of charitable and Hindu religious institutions and endowments does not show that in appointing trustees to temples the concerned authorities have to act judicially. Nor is the appointment of trustees under Section 15 left to the administrative authority without any guidelines laid down by the Legislature for being followed. Section 16 lays down the disqualifications for being appointed a trustee. Section 15(4) lays down that in making the appointment of trustees due regard shall be had to the religious denomination or any section thereof to which the institution belongs or the endowments is made and the wishes of the founder. If the appointment satisfies the above tests and if the person appointed is not disqualified under any of the clauses of Section 16, the appointment will not be affected in any way. The administrative authority concerned does not have to weigh the relative merits of various candidates in making the appointment of trustees. Normally it would exercise its own discretion as to who is best fitted to discharge the duties and functions of a trustee. But that is not to say that it mast set out the reasons as to why it has appointed somebody as trustee and not appointed somebody else as a trustee. The Legislature has left the matter to the discretion of the appointing authority subject to the guidelines that it has laid down in Sections 15 and 16. We do not consider that the fact that under Section 82 of the Act the Commissioner has got the power of revision in respect of orders passed by his subordinates and the Government in respect of orders passed by the Commissioner as well as his subordinates (there is no provision in the Act for a judicial review in respect of the order passed by the Government) in any way limits their power under Section 15(1)(a). We are of opinion that the learned Judges of the High Court were in error in so far as the implication of there observation is that in exercising their powers under Section 15 the administrative authorities concerned are exercising quasi-judicial functions and that it was necessary to have speaking order. We find that the Madras High Court in Commissioner, H.E. & C.E. v. B. R. Venkatachalapathi (85 LW 349.), after a very elaborate and instructive discussion has taken a similar view in respect of the powers of appointment of a non-hereditary trustees under Section 47 of the Madras Hindu Religious and Charitable Endowments Act, 1959, which more or less corresponds to Section 15 of this Act.

6. The appeal is, therefore, allowed and the judgment of the Andhra Pradesh High Court set aside. The appellant will pay the respondent's costs.

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