

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD  
(Special Original Jurisdiction)**

FRIDAY, THE TWENTY NINTH DAY OF NOVEMBER  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO**

**WRIT PETITION NO: 34663 OF 2011**

**Between:**

1. Rani Santhosh Saincher, (Died per LR P2).
2. Smt. Shalini Saincher, D/o Raja Prem Gopal Saincher Aged about 55 Years, Occ Housewife R/o Plot No. 109, Road No.9, Trimurthy Colony, Mahindra Hills, East Marredpally, Secunderabad.

Petitioner No.2 is brought on record as Lrs of deceased Petitioner No.1 as per Court Order dated 10.04.2024 Vide IA No.1 of 2024 in W.P. No. 34663 OF 2011

**...PETITIONER(S)**

**AND**

1. The State of Andhra Pradesh, rep. by its Principal Secretary, Revenue (Endowments) Department, Secretariat, Hyderabad.
2. The Commissioner of Endowments, Boggulakunta, Tilak Road, Abids, Hyderabad.
3. The Deputy Commissioner of Endowments, Hyderabad.
4. Sri Lakshmi Narasimha Swamy Temple, rep. by its Executive Officer, Shaikpet Village, Golkonda Mandal, Hyderabad.
5. State of Telangana, Revenue ( Endowments)Department Secretariat, Hyderabad Rep. by its Principal Secretary.

**Respondent No.5 is impleaded as per Court Order dated 10.07.2024 Vide IA No2 of 2024 in WP.No.34663 of 2011.**

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction, more particularly a writ in the nature of Writ of Mandamus declaring the action of the 1st respondent i.e., State of Andhra Pradesh in incorporating the Explanation II of Proviso to Sec.17(1) of the A.P.

Charitable and Hindu Religious Institutions and Endowments Act. 30 of 1987 as discriminatory and unconstitutional & against the provisions of Hindu Succession Act, 1956 and struck down Explanation II from the Statute.

**SRI P.VENUGOPAL, Amicus Curiae**

**Counsel for the Petitioner : SRI M.VIDYASAGAR**

**Counsel for the Respondent No.1: SRI HERUR RAJESH KUMAR,  
GP FOR ENDOWMENTS**

**The Court made the following: ORDER**

::2::

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE SRI JUSTICE J.SREENIVAS RAO**

**WRIT PETITION No.34663 of 2011**

**ORDER:** *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. M.Vidyasagar, learned counsel for the petitioners.

Mr. P.Venugopal, learned *Amicus Curiae*.

Mr. Herur Rajesh Kumar, learned Government Pleader  
for respondent No.1.

2. In this writ petition, the petitioner No.1 has assailed the validity of Explanation II of Proviso to Section 17(1) of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as 'the Act').

3. The factual background in which the challenge to the validity of the aforesaid provision needs mention, which is stated *infra*.

4. The petitioner No.1 claims to be successor-in-interest to the family of late Sri Kishan Prasad, who was instrumental in building a number of temples in and around Hyderabad and according to the petitioner No.1, the Jagir of late Sri Kishan

Prasad was extended upto 196 villages and the petitioner No.1 has right to manage Sri Lakshmi Narasimha Swamy Temple at Shaikpet Village. The said Temple has been registered under the provisions of the Act. The petitioner No.1 submitted an application before the Telangana Endowments Tribunal, Hyderabad as a Member of the Founder's family. However, the application submitted by the petitioner No.1 was returned in view of the prohibition contained in Section 17 of the Act. In the aforesaid factual background, the petitioner No.1 has assailed the validity of Explanation II of Proviso to Section 17(1) of the Act.

5. During pendency of the writ petition, petitioner No.1 died and her daughter has been brought on record as her legal representative and is arrayed as petitioner No.2.

6. Learned *Amicus Curiae* submitted that Section 17 of the Act was amended by Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Act, 2002 (hereinafter referred to as '2002 Act') and Explanation II of proviso to Section 17(1) of the Act was incorporated. However, no reasons are forthcoming from the perusal of

statement of objects and reasons. It is also submitted that in view of Explanation II of proviso to Section 17(1) of the Act, a female member of the family of the founder is excluded from being considered as member of the family of the founder. It is further submitted that men and women are equal and therefore, Explanation II of proviso to Section 17(1) of the Act is unconstitutional and offends the mandate contained in Articles 14 and 15 of the Constitution of India.

7. Learned counsel for the petitioners submitted that the impugned provision is contrary to the provisions of Hindu Succession Act and is discriminatory. It is contended that aforesaid provision offends fundamental right guaranteed to the petitioners under Articles 14 and 15 of the Constitution of India. It is contended that impugned provision is contrary to the object of the Act.

8. On the other hand, learned Government Pleader for respondent No.1 has submitted that Explanation II of proviso to Section 17(1) of the Act includes woman as member of the family of the founder. Our attention has also been invited to the definition of the expression 'hereditary trustee' and

'person having interest' as defined under Sections 2(16) and 2(18) of the Act. It is also submitted that the validity of Section 17 of the Act has already been upheld by the Supreme Court. In support of his submissions, reference has been made to Single Bench decision of Andhra Pradesh High Court in **P. Ashok Gajapathi Raju vs. the State of Andhra Pradesh**<sup>1</sup> and the decision of Supreme Court in **Pannalal Bansilal Pitti v. State of Andhra Pradesh**<sup>2</sup>.

9. We have considered the rival submissions made on both sides and have perused the record.

10. Before proceeding further, it is apposite to advert to the Legislative History. Prior to 1966, the administration and governance of Hindu Religious Institutions and Endowments, in the erstwhile State of Andhra Pradesh was regulated by Andhra Pradesh (Andhra Area) Hindu Religious and Charitable Endowments Act, 1951 in Andhra Area and by the Andhra Pradesh (Telangana Area) Wakf Regulation 1349 Fasli in Telangana Area. The State Legislature on the

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<sup>1</sup> 2021 (4) ALD 545

<sup>2</sup> (1996) 2 SCC 498

recommendations of the State Law Commission and with a view to secure uniformity of law throughout the State enacted an integrated enactment which applied to the entire erstwhile State of Andhra Pradesh in respect of all Hindu Public Religious Institutions and Public Charitable Institutions and Endowments. The State Legislature in the year 1966 enacted an Act namely, Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966. The aforesaid Act was enacted to consolidate and amend the law relating to administration and governance of Charitable and Hindu Religious Institutions and Endowments in the erstwhile State of Andhra Pradesh.

11. Thereafter, 1966 Act was repealed and an Act namely, the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 was enacted. In exercise of powers under Section 101 of the Andhra Pradesh Reorganization Act, 2014, the 1987 Act was made applicable to the State of Telangana. Section 17 of the Act deals with 'procedure for making appointments of trustees and their

term'. The said Section as contained in the Act, initially, reads as under:

**"17. Procedure for making appointments of trustees and their term:-** (1) In making the appointment of trustees under Section 15, the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall have due regard to the religious denomination or any section thereof to which the institution belongs or the endowment is made and the wishes of the founder:

Provided that one of the trustees shall be from the family of the founder, if qualified.

(2) Every trustee appointed under section 15 shall hold office for a term of three years from the date of taking oath of office and secrecy:

**Explanation:-** Where the oath of office and secrecy are administered on different dates, the period of three years shall be reckoned from the earlier of those dates for the purpose of this sub-section.

(3) The procedure for calling for application for appointment of trustees, verification of antecedents and other matters shall be such as may be prescribed.

(4) No person shall be a trustee in more than one Board of Trustees.

(5) In every Board of Trustees the women members shall not be less than two:



Provided that the Board of Trustees constituted under sub-section (3) of Section 15, shall at least consist of one woman member;

Provided further that the Board of Trustees constituted under sub-section (1) and (2) of Section 15 for the religious and charitable institution situated in the schedule area, there shall be one Member belonging to the Scheduled Tribe.

(6) All properties belonging to a charitable or religious institution or endowment, which on the date of commencement of this Act, are in the possession or under the superintendence of the Government, Zilla Praja Parishad, Municipality or other local authority or any company, society, organization, Institution or other person or any committee, superintendent or manager appointed by the Government, shall, on the date on which a Board of Trustees is or is deemed to have been constituted or trustee is or is deemed to have been appointed under this section, stand transferred to such Board of Trustees or trustee thereof, as the case may be, and all assets vesting in the Government, local authority or person aforesaid and all liabilities subsisting against such Government, local authority or person on the said date shall, devolve on the institution or endowment, as the case may be."

12. The constitutional validity of Sections 15, 16, 17, 29 (5) and 144 of the Act were challenged in a bunch of writ petitions before the Supreme Court in **Pannalal Bansilal Pitti**

**vs. State of Andhra Pradesh**<sup>3</sup>. A two-Judge Bench of the Supreme Court in the said decision upheld the validity of the aforesaid provisions. It was held that the rigour of Sections 17 and 29(5) of the Act would duly get softened by the requirement of the Board being headed by the founder or any of his family members, as the case may be.

13. The State Legislature by Amending Act No.27 of 2002, amended the 1987 Act. The provisions of Sections 17, 19, 20, 75, and 82 of the Act were amended. Section 17, which is relevant for the purpose of the controversy involved in the instant writ petition, was also amended and in sub-section (1) of the proviso, the following was substituted:

“Provided that the founder or one of the members of the family of the founder, if qualified as prescribed shall be appointed as one of the Trustees.

**Explanation I:-** “Founder” means a person who has founded an Institution or Endowment and recognized as such by the authority competent to appoint Trustees under Section 15.

**Explanation II:-** “Member of the family of the founder” means children, grandchildren and so in agnatic

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<sup>3</sup> (1996) 2 SCC 498

line of succession for the time being in force and declared or recognized as such by the relevant appointing authority.

**Explanation III:-** Those persons who founded temples by collecting donations partly or fully from the public as well as those who founded them on public lands shall not be recognized as founder trustees by any means”

Explanation-II provides that “member of the family of the founder” means children, grandchildren, and so in agnatic line of succession for the time being in force and declared or recognized as such by the relevant appointing authority. Therefore, the female members belonging to the family of the founder are excluded from succession to the office of trustee.

14. Thereafter, by Amending Act No.33 of 2007, the provisions of 1987 Act were further amended. Explanation-I to Section 17 (1) was substituted, which reads as under:

“In Section 17 of the Principal Act,--

(i) in sub-section (1) for Explanation I the following Explanation shall be substituted namely:-

**“Explanation I: “Founder” means,--**

(a) in respect of Institution or Endowments existing at the commencement of this Act, the person who was recognized as Hereditary ~~Trustee~~ under the Andhra Pradesh Charitable and Hindu Religious Institutions

and Endowments Act, 1966 or a Member of his family recognized by the Competent Authority;

- (b) In respect of an Institution or Endowment established after such commencement, the person who has founded such Institution or Endowment or a member of his family and recognized as such by the competent authority.”

15. The issue which arises for consideration is whether Explanation-II of proviso to Section 17 (1) of the Act is unconstitutional and offends Articles 14 and 15 of the Constitution of India, as it confines the line of succession only to “agnate” and excludes the female member of the family of the founder. In the instant case, succession to the post of trustee has been confined only to male members of family of the founder.

16. In **Raj Kali Kuer vs. Ram Rattan Pandey**<sup>4</sup>, the Supreme Court dealt with the issue whether a Hindu female is entitled to succeed to the hereditary, priestly of the office of “Pujari” and “Panda” held by her husband in a temple, and to receive emoluments thereof. In paragraph-10, it was held as under:

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<sup>4</sup> AIR 1955 SC 493

“10. A careful review, therefore, of the reported cases on this matter shows that the usage of a female succeeding to a priestly office and getting the same performed through a competent deputy is one that has been fairly well recognized. There is nothing in the textual Hindu law to the contrary. Nor can it be said that the recognition of such a usage is opposed to public policy, in the Hindu law sense. As already pointed out the consideration of public policy can only be given effect in the present state of the law, to the extent required for enforcing adequate discharge of the duties appurtenant to the office. Subject to the proper and efficient discharge of the duties of the office, there can be no reason either on principle or on authority to refuse to accord to a female the right to succeed to the hereditary office held by her husband and to get the duties of the office performed by a substitute excepting in cases where usage to the contrary is pleaded and established. In the present case such a usage was pleaded by the defendant in his written statement but no evidence of it was given. Indeed as pointed out by the first appellate court, the plea that there has been a partition of the offices of the two temples and the implied recognition of the plaintiff's right to the office of the other temple at Gangupal appears to indicate the contrary usage. We are accordingly of the opinion that the claim of the plaintiff-appellant is made out and that she is entitled to succeed.”

17. A three-Judge Bench of the Supreme Court in **Ram Rattan vs. Bajrang Lal**<sup>5</sup> held that the hereditary office of shebait is traceable to old Hindu texts and is a recognized concept of traditional Hindu law. It appears to be heritable

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<sup>5</sup> (1978) 3 SCC 236

and partible in the strict sense that it is enjoyed by heirs of equal degree by turn and transferrable by gift subject to the limitation that it may not pass to a non-Hindu.

18. The decision in **Raj Kali Kuer** (supra) was referred to with approval in **Shambhu Charan Shukla vs. Shri Thakur Ladli Radha Chandra Madan Gopalji Maharaj**<sup>6</sup> and in paragraph 11 it was held as under:

“11. This decision rendered in a case of sale of shebaiti right for pecuniary consideration appears to support the stand taken by Mr Chatterjee. But later decisions of this Court have taken a different view which appears to be consistent with the principles of Hindu law. We find the following passage in para 419-A of *Mulla's Hindu Law*, Fifteenth Edn.:

“Though a female is personally disqualified from officiating as a Pujari for the shastraically installed and consecrated idols in the temples, the usage of a female succeeding to a priestly office and getting the same performed through a competent deputy has been well-recognized and it is not contrary to textual Hindu law nor opposed to public policy. In *Raj Kali Kuer v. Ram Rattan Pandey* [AIR 1955 SC 493 : (1955) 2 SCR 186 : 1955 SCJ 493] the Supreme Court upheld such usage.”

In the next para 420 we find the following passage:

“A sale by a shebait or mohunt of his right to manage debutter property is void, even though the transfer may be coupled with an obligation to manage the property in confirmity

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<sup>6</sup> AIR 1985 SC 905

with the trust attached thereto. Nor can the right be sold in execution of a decree against him.”

19. Thus it is evident that Hindu law does not contain any provision which restricts a female to inherit the post of Pujari in a temple. The same analogy can be drawn in case of succession to a hereditary trusteeship.

20. Now we may examine whether the Explanation II of proviso to Section 17(1) of the Act is arbitrary and discriminatory and therefore, offends Article 14 of the Constitution of India.

21. A seven-Judge Bench of the Supreme Court in **State of West Bengal vs. Anwar Ali**<sup>7</sup> held that equality before law or equal protection of laws does not mean identity or abstract symmetry of treatment. It was further held that that distinction has to be made for different classes and groups of persons and a rational or reasonable classification is permitted. The Supreme Court laid down the following test to ascertain whether the classification made by legislation is reasonable or arbitrary:

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<sup>7</sup> (1952) 1 SCC 1 : AIR 1952 SC 75

(a) The classification must be founded on an *intelligible differentia* which distinguishes those that are grouped together from others are left out of the group.

(b) The differentia must have a reasonable relation to the object sought to be achieved by the Act.

22. Similar view was reiterated by a Constitution Bench of the Supreme Court in **E.P.Royappa vs. State of Tamil Nadu**<sup>8</sup>, **K.R.Lakshman vs. Karnataka Electricity Board**<sup>9</sup>, **Janhit Abhiyan vs. Union of India**<sup>10</sup> and **Ramesh Chandra Sharma v. State of Uttar Pradesh**<sup>11</sup>.

23. The object of Section 17 of the Act is to provide a representation to the founder in the Board of Trustees of a Trust or a religious endowment. Explanation II of proviso to Section 17(1) of the Act does not disclose any intelligible differentia so as to exclude the women members from the member of the family of the founder. A female member like a male member is a class I heir in the Hindu Succession Act. The artificial distinction sought to be put by the Explanation

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<sup>8</sup> (1974) 4 SCC 3

<sup>9</sup> (2001) 1 SCC 442

<sup>10</sup> (2023) 5 SCC 1

<sup>11</sup> (2024) 5 SCC 217 : 2023 SCC OnLine SC 162



II of proviso to Section 17(1) of the Act has no rational relation with the object of the provision, namely to provide representation to the founder in the Trust. A woman member of the family of the founder stands on the same footing as a male member of the family. The statutory right of succession to the office of the trustee cannot be deprived to a female member of the family merely because she is a woman. No justification has been offered by the respondents in the counter affidavit for exclusion of female members of the family of the founder. The exclusion of woman member has not been shown to be made for any justifiable cause and therefore, the rule of equality has to prevail. Therefore, the Explanation II of proviso to Section 17(1) of the Act insofar as it provides "and so in agnatic line of succession for the time being in force" offends the guarantee contained in Article 14 of the Constitution of India as the same is arbitrary and discriminatory.

24. A Constitution Bench of the Supreme Court in **R.M.D.Chamarbaugwalla vs. Union of India**<sup>12</sup> adjudicated

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<sup>12</sup> 1957 SCC OnLine SC 11

the issue with regard to the constitutionality of provisions of Prize Competitions Act, 1956 and its allied rules. It was held that when the statute is part void, it will be enforced as regards the rest, if that part is separable from what is valid. The Court laid down the principles to determine whether the valid part of the statute is inseparable from invalid part thereof. The relevant extract of para 22 reads as under:

“1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. Vide *Corpus Juris Secundum*, Vol. 82, p. 156; *Sutherland on Statutory Construction*, Vol. 2 pp. 176-177.

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. Vide *Cooley's Constitutional Limitations*, Vol. I at pp. 360-361; *Crawford on Statutory Construction*, pp. 217-218.

3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. Vide *Crawford on Statutory Construction*, pp. 218-219.

4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.

5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; (Vide *Cooley's Constitutional Limitations*, Vol. I, pp. 361-362); it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provision therein.

6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation. Vide *Sutherland on Statutory Construction*, Vol. 2, p. 194.

7. In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object, the title and the

preamble to it. Vide *Sutherland on Statutory Construction*, Vol. 2, pp. 177-178.”

25. The aforesaid principles were reiterated with approval by a three Judge Bench of the Supreme Court in **Anjum Kadari vs. Union of India**<sup>13</sup>.

26. In the instant case, the words in Explanation II of proviso to Section 17(1) of the Act, namely “and so in agnatic line of succession for the time being in force” which exclude the female members of the family of the founder members are separable from the valid part, namely “Member of the family of the founder means children, grandchildren and declared or recognized as such by the relevant appointing authority”. The aforesaid valid and invalid provisions cannot be said to be inseparable and are distinct and separate. Therefore, if the invalid provision of Explanation II of proviso to Section 17(1) of the Act is struck down, the female members of the family of the founder would be included in the definition of the family of the founder. We need not strike down the whole of Explanation II of proviso to Section 17(1) of the Act. Therefore, the words in Explanation II of proviso to Section

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<sup>13</sup> 2024 SCC OnLine SC 3129 ~

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17(1) of the Act "and so in agnatic line of succession for the time being in force" which offends the guarantee contained in Article 14 of the Constitution of India, are declared *ultra vires* the Constitution of India. Accordingly, it is struck down.

27. We place on record our appreciation for the able assistance offered by learned *amicus curiae*.

28. The writ petition is accordingly allowed. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

That Rule Nisi has been made absolute as above.  
Witness THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE, on this Friday,  
The Twenty Ninth Day Of November Two Thousand And Twenty Four

SD/- A. SRINIVASA REDDY  
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble Sri CHIEF JUSTICE ALOK ARADHE  
(For His Lordship's Kind Perusal)

&

One Fair Copy to the Hon'ble Sri JUSTICE J SREENIVAS RAO  
(For His Lordship's Kind Perusal)

To,

1. 11 LR Copies.
2. The Under Secretary, Union of India Ministry of Law, Justice and Company Affairs, New Delhi.
3. The Secretary, Telangana Advocates Association Library, High Court Buildings, Hyderabad.
4. The Principal Secretary, Revenue (Endowments) Department, Secretariat, State of Andhra Pradesh, Hyderabad.

5. The Commissioner of Endowments, Boggulakunta, Tilak Road, Abids, Hyderabad.
6. The Deputy Commissioner of Endowments, Hyderabad.
7. The Executive Officer, Sri Lakshmi Narasimha Swamy Temple, Shaikpet Village, Golkonda Mandal, Hyderabad.
8. The Principal Secretary State of Telangana, Revenue (Endowments) Department Secretariat, Hyderabad.
9. One CC to SRI M.VIDYASAGAR, Advocate. [OPUC]
10. One CC to SRI P.VENUGOPAL, Amicus Curiae. [OPUC]
11. Two CCs to GP FOR ENDOWMENTS, High Court for the State of Telangana. [OUT]
12. Two CD Copies.

BSK

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**HIGH COURT**

**DATED:29/11/2024**

**CC TODAY**



**ORDER**

**WP.No.34663 of 2011**

**ALLOWING THE WRIT PETITION  
WITHOUT COSTS**

28  
29/11/24  
bvs