

IN THE HIGH COURT OF KARNATAKA
GULBARGA BENCH

DATED THIS THE 31ST DAY OF JULY, 2014

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No.102294/2013 & 104143-152/2013 (GM-RES)

BETWEEN:

1. Dhanraj, S/o Tejmal Shah,
Age: 81 years, Occ: Business,
R/o Nalatwad, Tq. Muddebihal,
Dist. Bijapur – 586 212.
2. Mallappa, S/o Basalingappa Angadi,
Age: 31 years, Occ: Business,
R/o Nalatwad, Tq. Muddebihal,
Dist. Bijapur – 586 212.
3. Basavaraj, S/o Mahantappa Talikoti,
Age: 57 years, Occ: Business,
R/o Nalatwad, Tq. Muddebihal,
Dist. Bijapur – 586 212.
4. Mahantappagouda,
S/o Siddappgouda Patil,
Age: 59 years, Occ: Business,
R/o Nalatwad, Tq. Muddebihal,
Dist. Bijapur – 586 212.
5. Lingappa, S/o Ishwarappa Kuntoji,
Age: 74 years, Occ: Business,
R/o Nalatwad, Tq. Muddebihal,
Dist. Bijapur – 586 212.
6. Otmal, S/o Tolaji Shah,
Age: 84 years, Occ: Business,
R/o Nalatwad, Tq. Muddebihal,
Dist. Bijapur – 586 212.
7. Andaneppa, S/o Basappa Chiniwalar,
Age: 67 years, Occ: Business,

R/o Nalatwad, Tq. Muddebihal,
Dist. Bijapur – 586 212.

8. Shivappa, S/o Basappa Megalamani,
Age: 71 years, Occ: Business,
R/o Nalatwad, Tq. Muddebihal,
Dist. Bijapur – 586 212.
9. Amarappa, S/o Golappa Gangangoudar,
Age: 65 years, Occ: Business,
R/o Nalatwad, Tq. Muddebihal,
Dist. Bijapur – 586 212.
10. Sangappa, S/o Siddaramappa
Hampangoudar, Age: 70 years,
Occ: Business, R/o Nalatwad,
Tq. Muddebihal,
Dist. Bijapur – 586 212.
11. Basavaraj, S/o Annappa Chiniwar
alias Katti, Age: 53 years,
Occ: Business, R/o Nalatwad,
Tq. Muddebihal,
Dist. Bijapur – 586 212.

...PETITIONERS

(By Sri Ashok S.Kinagi, Adv.)

AND:

Nil.

...RESPONDENT

This Petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the order dated 30.05.2013 passed in Civil Misc. No.88/2012 by the Prl. District Judge at Bijapur vide Annexure-B and consequently remit the matter to the Trial Court to dispose of the petition in accordance with law.

This petition coming on for Preliminary Hearing this day, the Court made the following:

ORDER

1. In this writ petition, petitioner-Trustees are challenging the order dated 30.05.2013 passed by the Principal District Judge, Bijapur, dismissing Civil Misc. No.88/2012 filed by the petitioners herein seeking acceptance of application filed by them for recognizing their tenure as members of the Trust Committee and to hold that they are the lawful trustees of the Trust Committee viz., Shri Veereshwar Vidya Vardhak Sangha Nalatwad, Muddebihal Taluk, Bijapur District.

2. Petitioners claim to be the Trustees of Shri Veereshwar Vidya Vardhak Sangha Nalatwad, Muddebihal Taluk, Bijapur District. The said Trust is registered under the provisions of the Bombay Public Trusts Act, 1950 (for short, '1950 Act') with the Assistant Charity Commissioner, Belgaum, vide registration No.E-101 (BJP).

3. The object of the Trust is to establish and administer educational institutions as per the approved bye-laws. The Trust has got movable and immovable properties. The Trust elects 11 Managing Committee Members in its general body for a period of three years, apart from its office bearers.

4. Upon the repeal of the 1950 Act, the Trust was unable to get the report regarding the change in its constitution approved

by any competent authority. The present elected body is said to have been in office from 26.04.2012 till today and upto 25.04.2015. Petitioners urge that the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 (for short, '1997 Act') being silent about the educational institutions registered under the 1950 Act, the Trust was handicapped in approaching any authority to seek approval and recognition for its constitution and composition. A Government Circular dated 19.03.2004 bearing No. ಕಂಇ ಮುಸೇವಿ 2003 was issued stating that in the light of the repeal of the 1950 Act, the institutions such as educational institutions and non-hindu charitable institutions registered under the 1950 Act not falling under the 1997 Act, will be governed by the Charitable and Religious Trusts Act, 1920 (for short, '1920 Act'). This Government Circular is produced along with a memo. Based on the said Government Circular, petitioner has applied to the learned District Judge under Sections 3 & 7 of the 1920 Act seeking the aforementioned reliefs.

5. The learned District Judge has dismissed the petition holding that the petitioners have not stated in the petition that a Trust created for public purpose of a charitable or religious

nature or that the Trust did not fall within the purview of the 1997 Act.

6. I have heard the learned Counsel for the petitioners and perused the materials on record.

7. As rightly contended by the learned Counsel for the petitioners, the Trust does not fall within the 1997 Act because it is not a religious institution defined under Section 2(17) of the 1997 Act. The said definition states that 'religious institution' means a temple or an endowment and includes a brindavana, samadhi, peetha, paduka or any other institution established or maintained for a religious purpose. It is also not a charitable endowment because the definition of the term 'charitable endowment' as per Section 2(5) of the 1997 Act, means all property given or endowed for any religious charitable purpose.

8. It is thus clear that after the repeal of 1950 Act, the public trusts registered under the said Act which were not governed by the 1997 Act, did not have any provision of law to regulate their affairs. This vacuum was felt by the State Government which has issued Circular dated 19.03.2004 making it clear that after the repeal of 1950 Act, the Trusts which do not fall under 1997 Act will be governed by 1920 Act. This clarification is given by the Government for the purpose of

enabling the Trusts like the one on hand which are managing educational institutions and are running different institutions by rendering service to public at large, to get their affairs regulated in accordance with law within the frame work of 1920 Act. In the wake of such notification issued by the State Government, petitioners had made an application under Sections 3 & 7 of the 1920 Act.

9. The learned District Judge has adopted a very technical and pedantic approach in holding that the 1920 Act is not applicable. Such an interpretation would result in rendering the Trusts established for running educational institutions remediless in the matter of recognition of their status and in the matter of regulating their composition and periodical constitution. Unless the public trust enjoys such benefits to have their affairs regulated, the institutions run by them, may not be entitled to facilities such as recognition by the State Government and grant-in-aid under the relevant provisions. This will inturn lead to serious consequences, in as much as, public at large will suffer if the educational institutions established and run by these Trusts are paralyzed due to absence of recognition and proper management in the form of Trustees and office bearers. Therefore, the order passed by the District Judge which is contrary to the purpose and object

behind the circular dated 19.03.2004 and the communication dated 04.06.2005 issued by the State Government and the vacuum created due to repeal of the 1950 Act, cannot be sustained.

10. If the provision under Section 3 of the 1920 Act is looked as a whole, it cannot be said that the Trusts created for the purpose of establishing and administering educational institutions to impart education to the masses where the State is not in a position to provide infrastructure on its own to meet the educational requirements of the teeming millions it cannot be said that such Trusts established or not for public purpose of charitable in nature. The mere fact that requisite averments are not expressly made in the petition filed before the District Judge, could not have been made as basis to reject the application. The whole purpose and object of the Trust and the educational institution established by it has been mentioned in the petition, which clearly demonstrates that it is a public trust duly registered before the Assistant Charity Commissioner, Belgaum, under the 1950 Act. Hence, the order passed by the District Judge cannot be sustained in law.

11. In the result, this writ petition is allowed. The impugned order is set aside. The petition filed by the petitioners under

Sections 3 & 7 of the 1920 Act is allowed. The application filed by the petitioners is allowed. The newly elected office bearers of the Trust are recognized as members of the Committee of the Trust.

**Sd/-
JUDGE**

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