

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON**

Wednesday, the 27th day of March 2024 / 7th Chaithra, 1946
WP(C) NO. 7713 OF 2024(L)

PETITIONER:

**MANIKANDAN.M.P., AGED 51 YEARS, S/O. RAGHAVA PISHARADI, REGHU NIVAS,
THALAYANNAKKAD, KADAMPUR PO PALAKKAD DISTRICT, PIN - 679515**

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, REVENUE (DEVASWOM) DEPARTMENT, IST FLOOR - ANNEXE-II, THIRUVANANTHAPURAM, PIN - 695009**

AND 11 OTHERS

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an interim direction restraining the Respondents 9 to 12 from discharging the duties of Non Hereditary Trustee of Sree Thalayanakkad Siva temple, Kadambur on the basis of their appointment of Ext.P2 pending disposal of the Writ Petition(c).

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 12.03.2024 and upon hearing the arguments of M/S. K.MOHANAKANNAN and D.S.THUSHARA, Advocates for the petitioner, SENIOR GOVERNMENT PLEADER for the 1st respondent, STANDING COUNSEL for the respondents 2 to 7, SMT. CHITRA JOHNSON, Advocate for the 8th respondent and of SRI. MAHESH V RAMAKRISHNAN for Advocate respondents 9 to 12, the court passed the following:

ANIL K. NARENDRAN & HARISANKAR V. MENON, JJ.

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Dated this the 27th day of March, 2024

ORDER

Anil K. Narendran, J.

The petitioner, who is a devotee of Sree Thalayanakkad Siva Temple, Kadampur in Ottappalam, which is a controlled institution under the 2nd respondent Malabar Devaswom Board, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 3rd respondent Commissioner, Malabar Devaswom Board to issue an appropriate order/circular constituting a selection committee for the appointment of non-hereditary trustees in the temples, which are controlled institutions under the Board, consisting of a nominee of the Commissioner, the Executive Officer, the Tanthri, the Melsanthi and one hereditary trustee of that temple, for making such appointments. The petitioner has also sought for a writ of certiorari to quash Ext.P2 order dated 14.02.2024 of the 5th respondent Assistant Commissioner, Palakkad, as authorised by the 6th respondent Area Committee of the Malabar Devaswom Board, Palakkad, whereby respondents 9 to 12 have been

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appointed as non-hereditary trustees of Sree Thalayanakkad Siva Temple, for a period of two years; and a writ of mandamus commanding the 5th respondent Assistant Commissioner to fill up the post of non-hereditary trustees in Sree Thalayanakkad Siva Temple from among the qualified persons in Ext.P1 list, including the petitioner herein, within a time frame to be fixed by this Court.

2. On 29.02.2024, when this writ petition came up for admission, the learned Senior Government Pleader took notice on admission for the 1st respondent State and the learned Standing Counsel for Malabar Devaswom Board for respondents 2 to 7 i.e., the Board and its officials. Notice on admission by special messenger was ordered to respondents 8 to 12, returnable by 07.03.2024. The learned Standing Counsel for Malabar Devaswom Board was directed to get instructions.

3. The 8th respondent Executive Officer and respondents 9 to 12, who are the non-hereditary trustees appointed in terms of Ext.P2 order, have entered appearance through the respective counsel. Respondents 9 to 12 have filed a counter affidavit, opposing the reliefs sought for.

4. Heard the learned counsel for the petitioner, the learned

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Senior Government Pleader for the 1st respondent State, the learned Standing Counsel for respondents 2 to 7, the learned counsel for the 8th respondent Executive Officer and the learned counsel for respondents 9 to 12.

5. Regarding the appointment of non-hereditary trustees in the temples, which are controlled institutions under the Malabar Devaswom Board, a Division Bench of this Court in which one among us [Anil K. Narendran, J] was a party, has rendered the decision in **Chathu Achan K. v. State of Kerala [2022 (6) KLT 388]** which was followed by the decision in **Anantha Narayanan and another v. Malabar Devaswom Board and others [2023 KLT OnLine 1195 : 2023 SCC OnLine Ker 1022]**. The decisions referred to supra were rendered after referring to the law laid down by another Division Bench of this Court in **Suresh K. v. State of Kerala and others [2021 (2) KLT 885]**.

6. In **Anantha Narayanan [2023 KLT OnLine 1195]** this Court held that when clause 3(7) of the notification dated 08.02.2023 issued by the Commissioner, Malabar Devaswom Board for appointment as non-hereditary trustees in the temples, which are controlled institutions under the Malabar Devaswom Board, is

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considered in the light of the interpretation given by this Court in **Chathu Achan K. [2022 (6) KLT 388]**, no person actively involved in politics is eligible to be appointed as a non-hereditary trustee in a temple.

7. In **Anantha Narayanan [2023 KLT OnLine 1195]** the Division Bench noticed that the *Oxford Advanced Learners Dictionary* defines 'politician' as "a person whose job is concerned with politics, especially as an elected member of the Parliament, etc." Such a technical meaning of the word 'politician' cannot be accepted to understand clause 3(7) of the notification issued by the Commissioner, Malabar Devaswom Board which says that active politicians or persons holding official posts in any political party are ineligible. The terms are used disjunctively. So persons who are actively involved in politics, whether or not they hold any post in a political party, are ineligible. On the facts of the case on hand, the Division Bench noticed that respondents 6 to 8 therein have no case that they have any other profession. It is a matter of common knowledge that the functioning of a political party and selection/election of its office bearers is not similar to public employment. Whichever be the political party, one who is actively

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involved in the activities of that political party alone is ordinarily selected/elected as an office bearer. Having been selected as office bearers of the political party/DYFI before or soon after the appointment as non-hereditary trustees, respondents 6 to 8 cannot contend that they were not active politicians. In constitution of DYFI [Ext.R6(e)], it is stated that a member of the DYFI can work in any political party. That does not mean that the DYFI does not have any political colour. Whether or not it has any affiliation to any particular political party, what is evident from the constitution is that the area of activities of DYFI is politics and related activities. As such it cannot be said that the activities of DYFI are non-political.

8. In **Anantha Narayanan [2023 KLT OnLine 1195]** the Division Bench noticed that, going by the parameters prescribed in the notification issued by the Commissioner, Malabar Devaswom Board, persons who are convicted for more than six months for offences involving moral turpitude are alone ineligible to be non-hereditary trustees. It is, however, specifically prescribed in the said notification that persons who apply to be appointed as non-hereditary trustees shall be idol worshippers and persons having an interest in the advancement of the temple. They should also be

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persons used to be involved in the affairs of the temple. A person having reverence and adoration for a deity can alone be treated as a worshipper. A person facing criminal prosecution for an offence involving moral turpitude cannot be considered a true worshipper of that standard required for a person to be appointed as a trustee in a temple. A trustee is a person obligated to conduct temple affairs in accordance with custom or usage.

9. In the instant case, the document marked as Ext.P1 is a copy of the report dated 27.11.2023 of the 7th respondent Divisional Inspector, Malabar Devaswom Board addressed to the 5th respondent Assistant Commissioner, Palakkad. A perusal of Ext.P1 would show that when reports are called for from the Divisional Inspectors on the applications made for appointment as non-hereditary trustees in temples, which are controlled institutions under the Malabar Devaswom Board, reports are being submitted in a 'cyclostyled format' without dealing with the eligibility and disqualification of the individual applicants.

10. In Ext.P1 report of the Divisional Inspector, specific reference was made on the complaint made by the petitioner against the 12th respondent, with reference to the criminal proceedings

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initiated against him for an offence punishable under Section 55(A) of the Abkari Act, 1077 and the proceedings in M.P.No.2 of 2012 before the Deputy Commissioner, Kozhikode, which was closed as per Ext.P8 order dated 23.10.2013, with a direction to the 5th respondent Assistant Commissioner to prosecute the 12th respondent as to the charge of financial misappropriation before appropriate court. The document marked as Ext.P5 is an order dated 14.05.2012 of the Deputy Commissioner in M.P.No.2 of 2012 and Ext.P5 is a copy of the order dated 05.08.1998 of the Judicial First Class Magistrate Court, Ottapalam, whereby the application for bail filed by the 12th respondent in Crime No.26/1998 of Cheruplucherry Excise Range stands dismissed.

11. The counter affidavit filed on behalf of respondents 9 to 12 is one sworn to by the 9th respondent on behalf of others. The 12th respondent has not chosen to file an individual counter affidavit, denying the specific allegations levelled against him in relation to the proceedings referred to hereinbefore.

12. Insofar as respondents 9 to 11 are concerned, the grievance of the petitioner is that despite of availability of 10 eligible applicants for appointment as non-hereditary trustees, the 6th

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respondent Area Committee has chosen to reappoint the said respondents, who have already completed their two years term, based on their earlier appointment in the year 2021.

13. The learned counsel for the party respondents and the learned Standing Counsel for the Malabar Devaswom Board would point out the order of stay granted by this Court in W.P.(C)No.12189 of 2021, against the appointments made in the year 2021, which has also been pointed out in Ext. P1 report of the Divisional Inspector.

14. Having considered the pleadings and the materials on record and also the submissions made at the Bar, we deem it appropriate to grant an interim order staying the operation of Ext.P2 order dated 14.02.2024 of the 5th respondent Assistant Commissioner, which is one issue on behalf of the 6th respondent Area Committee, to the extent it relates to the appointment of the 12th respondent as non-hereditary trustee of Sree Thalayanakkad Siva Temple, for a period of three months.

15. A large number of writ petitions are being filed before this Court challenging the appointment of non-hereditary trustees in temples, which are controlled institutions under the Malabar Devaswom Board. In most of the writ petitions, the ground of

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challenge is that persons who are active politicians or persons who are involved in misappropriation of Devaswom funds, etc., are being appointed as non-hereditary trustees. In most of the cases, the devotees have a common grievance that the process of selection is not conducted in a fair and transparent manner, even without proper publication of the notification inviting applications for appointment as non-hereditary trustees.

16. In such circumstances, we deem it appropriate to direct the 1st respondent State and also the 2nd respondent Malabar Devaswom Board to file affidavits explaining the procedure that is being followed in the selection process for appointment of non-hereditary trustees in the temples, which are controlled institutions under the Malabar Devaswom Board. The orders/circulars governing the field shall be placed on record along with the affidavit.

17. Pending consideration of this writ petition, we deem it appropriate to direct the 2nd respondent Malabar Devaswom Board to give wide publicity to the notifications issued for making appointments to the post of non-hereditary trustees in the temples, which are controlled institutions under the Board. Such a notification shall be published in a local daily having wide circulation. The

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notification shall also be published in the notice board of the temple, at a prominent place, for the information of the devotees, and also in the notice boards of the concerned Local Self Government Institution and the Village Office. Once applications are received, the details of the applicants shall be exhibited in the notice board in the temple premises, so as to enable the devotees to point out the disqualifications, if any, of any one among the applicants, by submitting written objections before the Area Committee, furnishing therewith their name, address and mobile number. Those objections shall also be dealt with appropriately by the Area Committee, after obtaining individual reports on those complaints from the Divisional Inspector, before making any such appointments.

Post on 04.06.2024.

Sd/-
ANIL K. NARENDRAN
JUDGE

Sd/-
HARISANKAR V. MENON
JUDGE

vpv

APPENDIX OF WP(C) 7713/2024

- Exhibit P1** TRUE COPY OF THE COMMUNICATION SENT BY THE 7TH RESPONDENT TO THE 5TH RESPONDENT DATED 27-11-2023 WITH SCHEDULE
- Exhibit P2** TRUE COPY OF THE PROCEEDINGS OF THE 5TH RESPONDENT DATED 14-2-2024 NO.A5/579/2023/MDB(K.DIS) DATED 14-2-2024
- Exhibit P5** TRUE COPY OF THE PROCEEDINGS ISSUED BY THE 3RD RESPONDENT VIDE ORDER NO.MP-2/12/MDB/DATED 14-5-2012
- Exhibit P8** TRUE COPY OF THE ORDER IN MP 2/2012 DATED 23-10-2013 OF THE DEPUTY COMMISSIONER, MALABAR DEVASWOM BOARD, KOZHIKODE

