

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

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THE HONOURABLE MR. JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 21<sup>ST</sup> DAY OF JUNE 2022 / 31<sup>ST</sup> JYAISHTA, 1944

WP(C) NO. 18638 OF 2021

PETITIONER/S:

K.CHATHU ACHAN, AGED 95 YEARS  
S/O. M KUTTIKRISHNA MENON,  
MANAGING TRUSTEE SREE EMOOR BHAGAVATHY TEMPLE  
TRUST, SREE EMOOR BHAGAVATHY DEVASWOM,  
KALLEKULANGARA, PALAKKAD 678 008  
RESI MANIKKATH HOUSE, MAHIMA,  
AKATHETHARA, PALAKKAD 678 008  
BY ADV U.BALAGANGADHARAN

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY, REVENUE (DEVAWOM)  
DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVNANTHAPURAM 695 001
- 2 THE DISTRICT COLLECTOR,  
COLLECTORATE, CIVIL STATION, PALAKKAD 678 001
- 3 THE COMMISSIONER  
MALABAR DEVASWOM BOARD, HOUSEFED COMPLEX,  
ERANHIPAALAM P.O KOZHIKODE 673 006
- 4 THE ASSISTANT COMMISSIONER  
MALABAR DEVASWOM BOARD, CIVIL STATION, PALAKKAD  
678 001
- 5 THE SREE EMOOR BHAGAVATHY DEVASWOM  
KALLEKULANGARA P.O, PALAKKAD 678 008  
REPRESENTED BY EXECUTIVE OFFICER
- 6 THE EXECUTIVE OFFICER  
SREE EMOOR BHAGAVATHY DEVASWOM KALLEKULANGARA  
P.O, PALAKKAD 678 008

BY ADVS.  
SRI.R.LAKSHMI NARAYAN, SC, MALABAR DEVASWOM  
BOARD  
P.B.KRISHNAN  
P.B.SUBRAMANYAN  
SABU GEORGE  
MANU VYASAN PETER

OTHER PRESENT:

SRI S RAJMOHAN - SR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 05.04.2022, THE COURT ON 21.06.2022 DELIVERED THE  
FOLLOWING:

**JUDGMENT**

**“CR”**

**Anil K. Narendran, J.**

The petitioner, who is the hereditary trustee of Sree Emoor Bhagavathy Temple, Kallekulangara, Palakkad, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P5 notification dated 26.07.2021 issued by the 3<sup>rd</sup> respondent Commissioner, Malabar Devaswom Board. Ext.P5 notification, which is under challenge in this writ petition, is one issued by the 3<sup>rd</sup> respondent Commissioner, whereby applications are invited for the appointment of non-hereditary trustees of Sree Emoor Bhagavathy Temple. The petitioner has also sought for a writ of mandamus commanding the 3<sup>rd</sup> respondent and the 6<sup>th</sup> respondent Executive Officer of the 5<sup>th</sup> respondent Sree Emoor Bhagavathy Devaswom, to convene a meeting of the Board of Trustees at regular intervals and further direct them to execute and obey the decisions of the Board of Trustees, in accordance with the provisions of Ext.P1 Scheme approved by the order of the 3<sup>rd</sup> respondent dated

28.05.2018 in O.A.No.1 of 2018 for the administration of Sree Emoor Bhagavathy Temple, Sree Thrippalur Siva Temple, Sree Thiruvvara Siva Temple, Sree Chendamangalam Siva Temple and Easwaramangalam Siva Temple; a writ of mandamus commanding the 6<sup>th</sup> respondent to refrain from taking decisions unilaterally on the affairs of the temples, properties and school of the Devaswom, without consulting the hereditary trustees; and a declaration that, since no finding has been entered with regard to the need and necessity of appointing non-hereditary trustees for managing the temples, properties and school of the Devaswom, the present Board of Trustees consisting of two hereditary trustees is entitled to manage the affairs of the temple.

2. On 10.09.2021, when this writ petition came up for admission, this Court admitted the matter on file. The learned Senior Government Pleader took notice for respondents 1 and 2. The learned Standing Counsel for Malabar Devaswom Board took notice for respondents 3 and 4. Respondents 5 and 6 entered appearance through counsel. The learned Senior Government Pleader and also the learned Standing Counsel for Malabar Devaswom Board sought time to get instructions. The

learned counsel for respondents 5 and 6 submitted that Ext.P5 notification was issued in view of the proceedings in W.P.(C)No.4109 of 2021.

3. The learned Standing Counsel for Malabar Devaswom Board has filed a statement dated 20.09.2021, on behalf of the 3<sup>rd</sup> respondent, opposing the reliefs sought for in this writ petition. The petitioner has filed a reply affidavit dated 21.10.2021, reiterating the contentions raised in the writ petition. After the filing of reply affidavit, the 3<sup>rd</sup> respondent has filed a counter affidavit dated 12.11.2021, reiterating the stand taken in the statement dated 20.09.2021. Along with that counter affidavit, Ext.R3(a) communication dated 25.06.2021 of the 6<sup>th</sup> respondent Executive Officer, addressed to the 3<sup>rd</sup> respondent Commissioner pointing out the necessity for appointment of non-hereditary trustees in Sree Emoor Bhagavathy Temple is placed on record. The document marked as Ext.R3(b) is the statement showing the annual income of the temple for the year 2018 and Ext.R3(c) is a communication dated nil of the Tahsildar, Palakkad, addressed to the District Collector, Palakkad.

4. Heard the learned counsel for the petitioner, the learned Senior Government Pleader for respondents 1 and 2, the learned Standing Counsel for Malabar Devaswom Board for respondents 3 and 4 and also the learned counsel for respondents 5 and 6.

5. The learned counsel for the petitioner mainly contended that, for the appointment of non-hereditary trustees of Sree Emoor Bhagavathy Temple, the 3<sup>rd</sup> respondent Commissioner has to comply with the requirements of sub-section (2) of Section 39 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (for brevity, 'HR&CE Act'). Therefore, the procedure adopted by the 3<sup>rd</sup> respondent while issuing Ext.P5 notification dated 26.07.2021, inviting applications for the appointment of non-hereditary trustees is *per se* arbitrary and illegal, which warrants interference by this Court, in exercise of the extra ordinary jurisdiction under Article 226 of the Constitution of India.

6. Per contra, the learned Standing Counsel for Malabar Devaswom Board, for respondents 3 and 4, contended that, the provisions under sub-section (2) of Section 39 of HR&CE Act has no application in the matter of appointment of non-hereditary

trustees in Sree Emoor Bhagavathy Temple, which is governed by Ext.P1 Scheme approved by the 3<sup>rd</sup> respondent Commissioner, under Section 58 of the said Act. Therefore, no interference is warranted on Ext.P5 notification issued by the 3<sup>rd</sup> respondent.

7. Sree Emoor Bhagavathy Temple is a public religious institution coming within the purview of HR&CE Act, under the control of the Malabar Devaswom Board. The 6<sup>th</sup> respondent Executive Officer appointed by the Board is carrying out the day-to-day administration of the temple. By the order dated 27.8.1994 in O.A.No.13 of 1992, a scheme was formulated for the administration of the temple, under Section 58 of the Act, which was modified to certain extent, under sub-section (6) of Section 58 of the Act, as evidenced by Ext.P1 order dated 28.05.2018 of the 3<sup>rd</sup> respondent Commissioner in O.A.No.1 of 2018. As per Clause 4 of Ext.P1 Scheme, the temple and its properties, whether movable and immovable, are all vested with the deity. The administration of the temple shall vest with a Trustee Board, which includes hereditary trustees and non-hereditary trustees (maximum up to 3). The Managing Trustee of the Trustee Board shall be Palakkad Raja or another trustee

nominated by him. Non-hereditary trustees are appointed by the Malabar Devaswom Board or the Area Committee, as the case may be, depending upon their jurisdiction over the each temples covered under Ext.P1 Scheme. Clause 6 of the Scheme provides that, the Executive Officer of the Temple shall function as the Manager of Sree Hemambika Sanskrit School.

8. Section 39 of the Act deals with trustees and their number and term of office. As per sub-section (1) of Section 39 of the Act, where a religious institution included in the list published under Section 38 or over which no Area Committee has jurisdiction, has no hereditary trustee, the Commissioner shall constitute a Board of Trustees consisting of not less than three and not more than five persons appointed by him. As per sub-section (2) of Section 39, where, in the case of any such institution having a hereditary trustee or trustees; the Commissioner after notice to such trustee or trustees, and after such enquiry as he deems adequate, considers for reasons to be recorded, that the affairs of the institution are not, and are not likely to be, properly managed by the hereditary trustee or trustees, the Commissioner may, by order appoint such number



of non-hereditary trustees as he thinks necessary, so however that the total number of trustees does not exceed five.

9. As per sub-section (3) of Section 39 of the Act, every trustee appointed under sub-section (1) and subject to the result of an application, if any, filed under sub-section (4) every non-hereditary trustee appointed under sub-section (2) shall hold office for a term of five years, unless in the meanwhile the trustee is removed or dismissed or his resignation is accepted by the Commissioner or he otherwise ceases to be a trustee. As per sub-section (4) of Section 39, where the Commissioner by order appoints a non-hereditary trustee or trustees, the hereditary trustee or trustees may, within thirty days of the receipt of the order, file an application to the court to set aside or modify such order. As per sub-section (5) of Section 39, where a vacancy arises in the office of a non-hereditary trustee appointed under sub-section (2) the Commissioner shall not fill up such a vacancy unless, for reasons to be recorded, he considers it necessary to do so. A non-hereditary trustee appointed in the vacancy shall be deemed to have been appointed under sub-section (2) and the provisions of sub-sections (3) and (4) shall apply accordingly.

10. Section 40 of the Act deals with Chairman. As per sub-section (1) of Section 40, in the case of a religious institution for which a Board of Trustees is constituted under sub-section (1) of Section 39, the Board shall elect one of its member to be its Chairman. As per sub-section (2) of Section 40, in the case of any other religious institution having more than one trustee, the trustees of such institution shall elect one of their member to be the Chairman. As per sub-section (3) of Section 40, a Chairman elected under sub-section (1) or sub-section (2) shall hold office for such period as may be prescribed.

11. Section 41 of the Act deals with power of Area Committee to appoint trustees. As per sub-section (1) of Section 41, in the case of any religious institution over which an Area Committee has jurisdiction, the Area Committee shall have the same power to appoint trustees as is vested in the Commissioner in the case of a religious institution referred to in Section 39. As per the proviso to sub-section (1) of Section 41, the Area Committee may, in the case of any institution which has no hereditary trustee, appoint a single trustee. As per sub-section (2) of Section 41, the provisions of sub-section (3) of

Section 39 and Section 40, shall apply to the trustee or trustees appointed, or the Board of Trustees constituted, by the Area Committee as they apply in relation to the trustee or trustees appointed, or the Board of trustees constituted, by the Commissioner. As per Section 42 of the Act, the power to appoint trustees under Section 39 or Section 41 shall be exercisable notwithstanding that the scheme, if any, settled, or deemed under this Act to have been settled for the institution contains provisions to the contrary.

12. Section 58 of the Act deals with power of Deputy Commissioner to frame scheme. As per sub-section (1) of Section 58, when the Deputy Commissioner has reason to believe that in the interests of the proper administration of a religious institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application in writing, stating that in the interests of the proper administration of a religious institution a scheme should be settled for it, the Deputy Commissioner shall consult in the prescribed manner the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution; and if, after such consultation, he is satisfied

that it is necessary or desirable to do so, he shall, by order, frame a scheme of administration for the institution.

13. As per clause (a) of sub-section (2) of Section 58, a scheme settled under sub-section (1) for a temple or for a specific endowment other than one attached to a math may contain provision for removing any existing trustee, whether hereditary or non-hereditary. As per the proviso to clause (a) of sub-section (2) of Section 58, where provision is made in the scheme for the removal of a hereditary trustee, provision shall also be made therein for the appointment as trustee of the person next in succession who is qualified. As per clause (a) of sub-section (2) of Section 58, such a scheme may contain provision for appointing, or directing the appointment of a paid Executive Officer, who shall be a person professing the Hindu religion, on such salary and allowances as may be fixed, to be paid out of the funds of the institution; and defining the powers and duties of such officer. As per the proviso to clause (b) of sub-section (2) of Section 58, in making any provision of the nature specified in clause (b) due regard shall be had to the claims of persons belonging to the religious denomination for whose benefit the institution is chiefly maintained.

14. As per clause (a) of sub-section (3) of Section 58 of the Act, a scheme settled under sub-section (1) for a math or for a specific endowment attached to a math may contain provision for (a) associating one or more persons with the trustee or constituting a separate body for the purpose of participating or assisting in the whole or any part of the administration of the endowments of such math or of the specific endowment; provided that such person or persons or the members of such body shall be chosen from persons having interest in such math or endowment. As per clause (b) of sub-section (3) of Section 58, such a scheme may contain provision for appointing or directing the appointment of a paid executive officer, who shall be a person professing the Hindu religion, on such salary and allowances as may be fixed by the Deputy Commissioner, to be paid out of the trust funds, and defining the powers and duties of such officer. As per clause (b) of sub-section (3) of Section 58, such a scheme may contain provision for defining the powers and duties of the trustee.

15. As per sub-section (4) of Section 58 of the Act, the Deputy Commissioner may determine what are the properties of the religious institution and append to the Scheme a schedule

containing a list of such properties. As per the proviso to sub-section (4) of Section 58, such determination shall not affect the rights of persons who are in hostile possession of any of the said properties. As per sub-section (5) of Section 58, pending the framing of a scheme for a temple or for a specific endowment other than one attached to a math, the Deputy Commissioner may appoint a fit person to discharge all or any of the functions of the trustee thereof and define his powers and duties.

16. As per sub-section (6) of Section 58, the Deputy Commissioner may, at any time, after consulting the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution, by order, modify or cancel any scheme settled under sub-section (1) or a scheme settled by the Board under the Madras Hindu Religious Endowments Act, 1926. As per sub-section (7) of Section 58, every order of the Deputy Commissioner setting, modifying or cancelling a scheme under this Section shall be published in the prescribed manner and on such publication shall, subject to the provisions of Sections 61 and 62, be binding on the trustee, the executive officer and all persons having interest. As per sub-

section (8) of Section 58, the powers conferred by this Section shall, in respect of maths, be exercised by the Commissioner or by a Deputy Commissioner to whom powers in this behalf have been delegated by the Commissioner under sub-section (2) of Section 10.

17. In the instant case, in the interests of the proper administration of Sree Kallekulangara Emoor Bhagavathy Temple, which is admittedly a public religious institution coming within the purview of HR&CE Act, a scheme was originally framed under sub-section (1) of Section 58 of the Act, by the order dated 27.8.1994 in O.A.No.13 of 1992, which was modified to certain extent, under sub-section (6) of Section 58 of the Act, by Ext.P1 order dated 28.05.2018 of the 3<sup>rd</sup> respondent Commissioner in O.A.No.1 of 2018.

18. The learned counsel for the petitioner contended that, Ext.P1 Scheme specifically provides that, the power of the Board and the Area Committee to appoint non-hereditary trustees under Clause (4) is subject to Sections 39 and 41 of the HR&CE Act. Therefore, the 3<sup>rd</sup> respondent Commissioner cannot contend that notice under sub-section (2) of Section 39 of the Act is not required when the scheme under Section 58 is

operational. The scheme is framed under the provisions of the Act and no scheme can go beyond the framework of the statute. Regarding the averment in the counter affidavit filed by the 3<sup>rd</sup> respondent that, the appointment of the non-hereditary trustees has been found inevitable, the petitioner would contend that no such finding has been arrived at, after conducting an enquiry. The mandate under Section 39 of the Act cannot be ignored by the 3<sup>rd</sup> respondent, banking upon Ext.P1 Scheme. Unless the mandatory conditions of sub-section (2) of Section 39 of the Act are fulfilled in its true spirit, the 3<sup>rd</sup> respondent cannot be permitted to go ahead with Ext.P5 notification for the appointment of non-hereditary trustees in the temple.

19. On the other hand, the learned Standing Counsel for respondents 3 and 4 contended that, as per Ext.P1 Scheme, the Board has the power to make appointments to the post of non-hereditary trustees, since the administration is vested in a Trustee Board consisting of two hereditary trustees and three non-hereditary trustees, as specified therein. So no notice or consultation with the hereditary trustees is required for appointing non-hereditary trustees or for filling up the posts, as and when vacancies arose. Sub-section (2) of Section 39 of the



HR&CE Act relates to the appointment of non-hereditary trustees in temples, where there is no scheme framed in terms of Section 58, which deals with the power of the Deputy Commissioner for settling a scheme for proper administration of a religious institution. The Deputy Commissioner is also given power to effect modification, alterations or cancellation of the scheme settled under sub-section (1) of Section 58 of Act. It is in pursuance to Ext.P1 scheme that Ext.P5 proceedings have been issued by the 3<sup>rd</sup> respondent, for the appointment of non-hereditary trustees. As long as Ext.P1 Scheme is in operation, the Board is duty bound to constitute a Board of Trustees by selecting three non-hereditary trustees, as envisaged under the said Scheme. Appointment of non-hereditary trustees for proper administration of the temple, in accordance with the settled scheme, would not in any manner infringe the right of the hereditary trustees. Mentioning of Section 39 or 41 of the Act in Ext.P1 scheme by itself will not give rise to any presumption that the hereditary trustees is entitled to any notice or hearing with regard to the appointment of non-hereditary trustees, in terms of the said Scheme, if the Board has decided to appoint the non-hereditary trustees, as per the said scheme.

20. The specific stand taken by the 3<sup>rd</sup> respondent is that, the necessity for appointment of non-hereditary trustees in Sree Emoor Bhagavathy Temple is discernible from the materials before the Board. The hereditary trustees are aged above 90 years and they are not participating or involving in the temple administration. Even though, renovation works are going on with the active support of a committee of devotees, as approved by the Board, the hereditary trustees have not even visited the temple or provided any guidance in the matter. The temple is included in the category of "A Grade" temples. The annual income of the temple, up to the year 2018, was above Rs.1,00,00,000/- and 25 employees are working in various posts. The temple owns vast extend of landed properties and numerous litigations with regard to encroachment of temple properties are pending before various forums. Being so, for a proper conduct of those litigations and also for administering the affairs of the temple efficiently, with due diligence, an efficient administrative body in the form of a Trustee Board, consisting of non-hereditary trustees, is a necessity. Further, the appointment of non-hereditary trustees would augment the commitment and involvement of the devotees in the temple and

its affairs. The above circumstances were also considered by the 3<sup>rd</sup> respondent, at the time of issuance of Ext.P5 notification.

21. The specific case of the 3<sup>rd</sup> respondent is that, even after the framing of the Scheme in the year 1994, the hereditary trustees were not involving in the administration of the temple. So, considering the overall scenario and inputs from the Executive Officer, coupled with the necessity of having an efficient Trustee Board to manage the affairs of the temple and to protect its properties, the appointment of non-hereditary trustees is found inevitable. Moreover, the Trustee Board has to manage the affairs of Hemambika Sanskrit School, under the management of the temple. The hereditary trustees who are aged, cannot effectively manage the affairs of the temple and the school by themselves and therefore, the constitution of a Trustee Board inclusive of non-hereditary trustees is an absolutely necessity. The 3<sup>rd</sup> respondent pointed out that, a suit filed by Palakkattussery Sevana Samajam against Ext.P1 Scheme is pending before the Sub Court, Palakkad, as O.S.No.45 of 2019. In paragraph 4 of the plaint, it is averred that, "most of the Valiyaraja's, having regard to their old age and ill health, are not able to involve and participate in the

trustee meetings". According to the 3<sup>rd</sup> respondent, all these would conclusively indicate that without a Trustee Board having non-hereditary trustees, as contemplated under Ext.P1 Scheme, the affairs of the temple and the school cannot be efficiently managed. Therefore, Ext.P5 notification is perfectly legal, which warrants no interference in this writ petition.

22. In **Gopinatha Menon (Kenathachan) v. Malabar Devaswom Board and others** [judgment dated 12.04.2012 in W.P.(C)No.9194 of 2012] a Division Bench of this Court held that, recourse to sub-section (2) of section 39 of the HR&CE Act, is not necessary to make an appointment of a non-hereditary trustee on any ground referable to the conduct of the hereditary trustee, or otherwise, when there is a scheme governing the Trust, which provides, among other things, for appointment of four non-hereditary trustees.

23. The learned Standing Counsel for respondents 3 and 4 pointed out that, even though Ext.P1 Scheme was challenged before the Sub Court, Palakkad in O.S.No.45 of 2019, no stay has been granted by the court against the operation of the said scheme. As such, the Board shall have the power to appoint non-hereditary trustees in the temple. Further, notice under

sub-section (2) of Section 39 of Act is not required when the scheme is operational, as held by this Court in **P.C. Kunchettana Raja and another v. State of Kerala and others** [judgment dated 20.10.2017 in W.P.(C)No.17285 of 2015].

24. The learned counsel for the petitioner contended that, the reliance placed by the learned Standing Counsel for Malabar Devaswom Board on the judgment of this Court in **P.C. Kunchettana Raja** (supra) is highly misleading. The facts are entirely different in that writ petition and two other connected matters. In those cases, the question of first time appointment of non-hereditary trustees was not considered at all. The judgment was on entirely different factual background. In those cases, posts of non-hereditary trustees, which became vacant, were sought to be filled and there arose a question whether the hereditary trustees be consulted while filling up the vacant posts of non-hereditary trustees. The question of first time appointment of non-hereditary trustees was not the issue considered in those cases. On the other hand, in the case on hand, the original scheme framed in the year 1994 has provision for non-hereditary trustees. However, the posts of non-

hereditary trustees remained unfilled, so far, for more than 30 years. The two hereditary trustees have been managing all the functions and festivals in the temple in a most befitting manner. The hereditary trustees have been supervising the conduct of festivals, as per the time schedule given in paragraph 7 of the writ petition and there are no complaints or allegations from the devotees so far and there are no dispute over the conduct of temple festivals.

25. In **P.C. Kunchettana Raja** (supra), the learned Single Judge of this Court was dealing with a case in which the 1<sup>st</sup> petitioner was the hereditary trustee of Sree Mammiyoor Devaswom and the 2<sup>nd</sup> petitioner was the fifth in line of succession of 'Sthanis', i.e., 'Anjam Sthani'. Their case was that, Ext.P1 Scheme of administration was framed under sub-section (1) of Section 58 of HR&CE Act in respect of the three temples of which Eralpadu Raja is the hereditary trustee. Clause 4 of the scheme states that the administration of the Devaswoms shall vest with the hereditary trustee and such other number of non-hereditary trustees appointed by the Department, under Section 39 or 41 of the Act. It was contented that, the impugned communication seeking appointment of non-hereditary trustees

is in violation of the rights of the hereditary trustees and the members of Zamorin Family. Relying on the decisions of the Apex Court in **Sri Sri Sri Lakshamana Yatendrulu v. State of Andhra Pradesh [(1996) 8 SCC 705]** and in **Dr.Subramnian Swamy v. State of Tamil Nadu [(2014) 5 SCC 75]** and the decision of this Court in **Bhanunni A.C. and others v. Commissioner, Hindu Religious Charitable Endowment (Admn.) Department, Kozhikode and others [2011(3) KHC 900]**, **Malabar Devaswom Board v. Valliyodan Krishnan Nair [2012(4) KLT 804]** and **Payyannur Sree Subramanya Swami Kshethroddharana Samithi and another v. Malabar Devaswom Board and others [2013 (3) KHC 849]**, it was contented that framing of a scheme for administration of a religious endowment or a temple is only to remedy mismanagement and cannot supersede the rights of administration of a religious denomination in perpetuity. It was further contented that Ext.P4 decision is contrary to sub-section (2) of Section 39 of the Act.

26. In **P.C. Kunchettana Raja** (supra), before the learned Single Judge, the Malabar Devaswom Board contented that the appointment of non-hereditary trustees was provided

in Ext.P1 Scheme framed as early as in the year 1991. Non-hereditary trustees were initially appointed in the year 1989, pursuant to the steps taken for framing the scheme. Sub-section (2) of Section 39 of the Act only provides for notice to the hereditary trustees when non-hereditary trustees are sought to be inducted for the first time, on account of lack of proper management or mismanagement by the hereditary trustees. The provision does not apply to the appointment of non-hereditary trustees, as proposed in Exts.P2 and P4, since the said appointment is pursuant to a scheme framed in the year 1991, under Section 58 of the Act. The appointment of non-hereditary trustees in accordance with the provisions of the scheme do not require notice or consultation with the hereditary trustees. The non-hereditary trustees having been continuously appointed since the year 1989 in the temple in question, it is too late in the day for the petitioner to contend that his rights under Article 26 of the Constitution of India are infringed by such appointment. The 4<sup>th</sup> respondent Executive Officer has also filed counter affidavit raising similar contentions.

27. In **P.C. Kunchettana Raja** (supra), the learned Single Judge, after considering the pleadings and materials on



record, noticed that the 1<sup>st</sup> petitioner was issued with Ext.P2 notice seeking his views on the appointment of non-hereditary trustees in the vacancy created by the expiry of the term of the existing incumbents. Ext.P2 is the reply submitted by the 1<sup>st</sup> petitioner and Ext.P4 is the notice dated 09.04.2015, calling for application from persons to be appointed as non-hereditary trustees. It is true that sub-section (2) of Section 39 of HR&CE Act is referred to in Ext.P2 notice. It is an inadvertent error, since no notice under the said sub-section is required, as the appointment is in a vacancy created by the expiry of term of non-hereditary trustees appointed under the scheme. The learned Single Judge noticed that HR&CE Act is enacted to provide for proper administration and governance of Hindu Religious Institutions. Sub-section (2) of Section 39 of the Act relates to the appointment of hereditary trustees in temples, where there is no scheme framed in terms of Section 58, which deals with the power of the Deputy Commissioner for settling a scheme for proper administration of religious institutions. A scheme framed under Section 58 can contain provisions for removing any existing trustee, whether hereditary or non-hereditary. It can also provide for appointing or directing the

appointment of paid Executive Officer and for defining the powers and duties for such an officer. The Deputy Commissioner is also given the power to order modification or cancellation of any scheme settled under sub-section (1) of Section 58. Once a scheme is framed in terms of sub-section (1) of Section 58, the Board has to see that the administration of the temple is carried on in accordance with that scheme. Ext.P1 Scheme provides for the vesting of administration of three Devaswoms of Eralpadu Raja with hereditary trustees and such number of non-hereditary trustees appointed under Section 39 or 41 of the Act. It is pursuant to the said Scheme that Ext.P4 notice has been issued for the appointment of non-hereditary trustees. After considering the rival contentions, in the light of the law laid down by the Apex Court and this Court in the decisions referred to supra, the learned Single Judge found that nothing stated therein would affect the power of Malabar Devaswom Board to appoint non-hereditary trustees in respect of a temple where a settled scheme specifically provides for such appointment. In support of the said conclusion, the learned Single Judge relied on the law laid down by the Division Bench in **V. Sudharsanan v. Malabar Devaswom Board and**

**others** [judgment dated 20.06.2012 in W.P.(C)No.6328 of 2012], wherein it was held that notice under sub-section (2) of Section 39 of the Act is not required for filling up of vacancies of non-hereditary trustees, where a scheme is operational. The learned Single Judge found no merit in the contention of the petitioners that the appointment of non-hereditary trustees along with the hereditary trustee for a proper administration of the temple, in accordance with the settled scheme, would in any manner infringe the rights of the hereditary trustee.

28. In **Zamorin Raja of Calicut v. Malabar Devaswom Board and others** [judgment dated 27.11.2019 in W.P.(C)No.31154 of 2019], the proceedings initiated by the Commissioner, Malabar Devaswom Board for appointment of non-hereditary trustees in Thirunavaya Sree Navamukunda Temple was under challenge before the Division Bench, by contenting that the said proceedings was without following the mandate of Section 39 of HR&CE Act and as such, illegal and unsustainable. On receipt of a notice dated 29.11.2018, the petitioner, who is the hereditary trustee, submitted Ext.P7 reply dated 22.12.2018, wherein it was pointed out that there is absolutely no necessity to appoint non-hereditary trustees in

Thirunavaya Devaswom. However, the Commissioner issued Ext.P8 notification dated 13.05.2019, inviting applications for appointment of non-hereditary trustees. Subsequent to Ext.P8, the petitioner submitted Ext.P9 reply dated 12.06.2019, reiterating his stand in Ext.P7. Despite the receipt of Ext.P9, the Commissioner went on with the decision to appoint non-hereditary trustees in the temple, as obvious from Ext.P10 notice dated 30.10.2019, requiring the applicants who responded to Ext.P8 notification to appear for verification of documents regarding the qualification for being considered for appointment as non-hereditary trustees.

29. In **Zamorin Raja of Calicut** (supra), before the Division Bench, it was contended by the writ petitioner that the Commissioner has no authority to appoint a non-hereditary trustee in Thirunavaya Temple, without the consent of the petitioner, who is the hereditary trustee. The question of appointment of non-hereditary trustees invoking the powers under Section 39 of the Act would arise only if the affairs of the temple are not properly being managed by the hereditary trustees. Even in such circumstances, only after recording all the reasons therefor that appointment of non-hereditary

trustees could be effected in the temple. It was contended that, the decision taken by the Commissioner for appointment of non-hereditary trustees, as evidenced by Ext.P8 notification, and the consequential action for effecting such appointment are not preceded by any order, which carries a reason reflecting the necessity to effect such appointment. In support of the said contention, the petitioner relied on the decisions in **Bhannunni v. Commissioner, HR&CE Department [2011 (3) KHC 900]**, **Zamorin Raja v. Government of Kerala [2014 (4) KLT 841]**, **Sreedharan Nambissan v. Commissioner, Malabar Devaswom Board [2018 (2) KLT 115]** and the decision in **Neelakantan v. State of Kerala** [Judgment dated 27.10.2005 in W.P.(C)No.6718 of 2004].

30. In **Zamorin Raja of Calicut** (supra), before the Division Bench, it was contended by the Malabar Devaswom Board that the provisions under Section 39 of the HR&CE Act, be it under sub-section (2) or sub-section (5) of Section 39, are not applicable in a case where there is specific provision in the scheme approved for the temple, which provides for the appointment of a maximum of four non-hereditary trustees. If there is a scheme for appointment of non-hereditary trustees,

then taking recourse to sub-section (2) or sub-section (5) of Section 35 of the Act is not necessary. In support of the said contention, the Board relied on the judgment of the Division Bench in **Gopinatha Menon** (supra). After considering the rival contentions, in the light of the law on the point, the Division Bench held that, in view of the provisions in Clause (2) of Ext.P1 Scheme of administration of Thirunavaya Sree Navamukunda Temple, the contention of the petitioner that there is no requirement of appointment of non-hereditary trustees in the said temple must pale into insignificance.

31. The learned counsel for the petitioner placed reliance on the decision of the Division Bench in **Parameshwaran Namboothiri P.M. and another v. Commissioner, Malabar Devaswom Board [2011 (2) KHC 719]**, wherein it was held that without issuing notice to the hereditary trustees or hearing them and making an enquiry as prescribed, the authority cannot decide to appoint non-hereditary trustees under sub-section (2) of Section 39 of HR&CE Act. The said position was reiterated by another Division Bench in **Sreedharan Nambissan P. v. Commissioner,**

**Malabar Devaswom Board and others, [2018 (2) KLT 115].**

32. The aforesaid decisions of the Division Bench are in the context of the provisions under sub-section (2) of Section 39 of the HR&CE Act, which deals with appointment of non-hereditary trustees, in the circumstances stated in the sub-section (2), which has no application, when the appointment of non-hereditary trustees in a temple is governed by the provisions under the scheme framed under Section 58 of the Act. Sub-section (2) of Section 39 of the Act relates to the appointment of hereditary trustees in temples, where there is no scheme framed in terms of Section 58 of the Act. Once such a scheme is framed, the Board has to see that the administration of the temple is carried on in accordance with that scheme. The reference of Sections 39 and 41 of the Act in Clause 4 of Ext.P1 scheme does not in any manner affect the right of the Board to appoint non-hereditary trustees in the temple, in terms of Clause 4 of the said scheme. Therefore, we find no merits in the contentions raised by the petitioner, relying on the provisions under sub-section (2) of Section 39 of the Act,

in order to challenge Ext.P5 notification dated 26.07.2021 issued by the 3<sup>rd</sup> respondent Commissioner.

33. The learned counsel for the petitioner submitted that, the 6<sup>th</sup> respondent Executive Officer appointed by the 3<sup>rd</sup> respondent Commissioner has been ignoring the hereditary trustees altogether and they are not being consulted with. The Executive Officer acts like an autocrat, disregarding the very authority and power of the hereditary trustees, who comfortably forgets that he is only a servant of the Trustee Board, who is bound by the decisions of the Trustee Board consisting of two hereditary trustees.

34. Section 66 of the HR&CE Act deals with appointment of salaried Executive Officer. As per sub-section (1) of Section 66, for every institution notified under Chapter VI, the Commissioner shall, as soon as may be, appoint a salaried Executive Officer, who shall be a person professing Hindu religion. As per sub-section (2) of Section 66, the salary and allowances of the Executive Officer, as determined by the Commissioner, shall be paid from the funds of the religious institution.



35. Section 67 of the HR&CE Act deals with term of office and duties of Executive Officer. As per sub-section (1) of Section 67, the Executive Officer shall hold office for such period as may be fixed by the Commissioner and he shall exercise such powers and perform such duties as may be assigned to him by the Commissioner. As per the proviso to sub-section (1), only such powers and duties as appertain to the administration of the endowments of the religious institution shall be assigned to the Executive Officer. As per sub-section (2) of Section 67, the Commissioner shall define the powers and duties which may be exercised and performed respectively by the Executive Officer and a trustee, if any, in the religious institution.

36. The Executive Officer has to exercise the powers and perform duties, as assigned by the 3<sup>rd</sup> respondent Commissioner, in the administration of the temple in question. When the power and duties of an Executive Officer is specified in the statute, the petitioner cannot contend that the 6<sup>th</sup> respondent Executive Officer is only a servant of the Trustee Board, who is bound by the decisions of the Trustee Board consisting of two hereditary trustees.

37. The learned counsel for the petitioner contended that, the 3<sup>rd</sup> respondent Commissioner is acting on the pressure brought to bear upon it from his political masters, who want to induct their own persons in the Trustee Board, with the intention to interfere in the affairs of the temple and also the school and to politicise the temple administration. The age of the hereditary trustee is not a disqualification and it cannot constitute a valid reason for the appointment of non-hereditary trustees. The hereditary trustees are capable of discharging their functions.

38. Clause 3 of Ext.P5 notification dated 26.07.2021 issued by the 3<sup>rd</sup> respondent Commissioner deals with disqualifications and Clause 4 deals with eligibility of a person for being appointed as non-hereditary trustee of Sree Emoor Bhagavathy Temple. Clauses 3 and 4 of Ext.P5 notification read thus;

“3. താഴെ പ്രസ്താവിച്ച അയോഗ്യതകളിൽ ഏതെങ്കിലുമൊന്നോ, എല്ലാമോ ഉള്ള ആളുകൾക്ക് നിയമനത്തിന് അർഹതയുണ്ടായിരിക്കുന്നതല്ല. അതിനാൽ അവർ അപേക്ഷിക്കേണ്ടതില്ല.

a) സദാചാരദൃഷ്ട്യമുൾപ്പെടാത്ത വല്ല കുറ്റത്തിനും നാടുകടത്തിൽ ശിക്ഷയോ, ആറു മാസത്തിലധികമായ ഒരു കാലത്തേക്കുള്ള തടവുശിക്ഷയോ ഒരു ക്രിമിനൽ കോടതി ശിക്ഷിച്ചിട്ടുള്ള ആളുകൾ അങ്ങനെയുള്ള ശിക്ഷ ദുർബലപ്പെടുത്താതിരിക്കുകയോ അല്ലെങ്കിൽ ആറു മാസമോ അതിൽ കുറവോ ആയ ഒരു കാലത്തേക്കു ചുരുക്കാതിരിക്കുകയോ അല്ലെങ്കിൽ ഗവൺമെന്റ് അങ്ങനെയുള്ള കുറ്റം മാപ്പാക്കാതിരിക്കുകയോ വീണ്ടും അല്ലെങ്കിൽ ആ ശിക്ഷ ഒരു അയോഗ്യതയായിത്തീരുന്നതല്ലെന്നു ഗവൺമെന്റ് കൽപ്പിക്കാതിരിക്കുകയോ ചെയ്യുമ്പോൾ.

b) ദീവാളിയായി വിധി കല്പിക്കപ്പെടുകയോ അല്ലെങ്കിൽ അങ്ങിനെ വിധി

- c) മുന്പുതന്നെ വല്ല കട്ടലായികളുടേയോ ക്ഷേത്രത്തിനോടു ചേർത്ത് പ്രത്യേക ദാനസ്വത്തുക്കളുടേയോ ട്രസ്റ്റികളായിട്ടുള്ള ആളുകൾ.
- d) മുന്പുതന്നെ വല്ല ക്ഷേത്രത്തിന്റെയും ട്രസ്റ്റികളായിരിക്കുകയും ആക്ട് പ്രകാരം ഏർപ്പെടുത്തപ്പെട്ട കാര്യനിർവ്വാഹക ബോർഡിനാലോ, അധികാരസ്ഥന്മാരോലോ നീക്കം ചെയ്യുകയോ, പിരിച്ചയക്കുകയോ ചെയ്യപ്പെടുകയും ചെയ്ത ആളുകൾ.
- e) ഒരു ട്രസ്റ്റിയുടെ പ്രവൃത്തികൾ നിർവ്വഹിക്കുന്നതിന് തങ്ങളെ അയോഗ്യരാക്കിത്തീർക്കുന്ന ചിത്തഭ്രമമോ, മാനസികമോ, കായികമോ ആയ മറ്റു ദുഷ്യമോ, ശേഷികേടോ ഉള്ള ആളുകൾ.
- f) തൊഴിൽപരമായി തിരക്കുപിടിച്ചവർ,
- g) സജീവ രാഷ്ട്രീയ പ്രവർത്തകർ, രാഷ്ട്രീയ പാർട്ടികളുടെ ഔദ്യോഗിക പദവികൾ വഹിക്കുന്നവർ,
- h) ദേവസ്വം സ്ഥലം/ഭൂമി/ കെട്ടിടം കയ്യേറിയവർ,
- i) ദേവസ്വത്തിന് താൽപര്യമുള്ള വ്യവഹാരത്തിൽ പ്രതി എതിർ കക്ഷിയായിട്ടുള്ളവർ,
- j) ദേവസ്വത്തിനെതിരായി വ്യവഹാരം ഫയൽ ചെയ്തിട്ടുള്ളവർ.”

“4. (a) അപേക്ഷകൾ ക്ഷേത്രം സ്ഥിതിചെയ്യുന്ന താലൂക്കിലെ സ്ഥിരതാമസക്കാരനായിരിക്കണം, വോട്ടർ പട്ടികയിലെ പേരോ, റേഷൻകാർഡിലെ വിലാസമോ ഇതിന് തെളിവായി അപേക്ഷയോടൊപ്പം ഹാജരാക്കേണ്ടതാണ്.

(b) അപേക്ഷകൾ സാധാരണയായി /പതിവായി ക്ഷേത്രം സന്ദർശിക്കുന്ന സ്വഭാവമുള്ള ആളായിരിക്കണം.

(c) അപേക്ഷകർ വിഗ്രഹാരാധനയിൽ വിശ്വസിക്കുന്ന ആളായിരിക്കണം. ക്ഷേത്രം/ ക്ഷേത്രങ്ങളുടെ പുരോഗതിക്കുവേണ്ടി സജീവമായി പ്രവർത്തിക്കുന്നവരായിരിക്കണം.

(d) വിദ്യാഭ്യാസ യോഗ്യത തെളിയിക്കുന്നതിനുള്ള രേഖകൾ അപേക്ഷയോടൊപ്പം ഹാജരാക്കിയിരിക്കണം..”

39. Clause 4 of Ext.P5 notification, which deals with eligibility of a person for being appointed as non-hereditary trustee of Sree Emoor Bhagavathy Temple, makes it explicitly clear that the applicant should be a regular worshipper of the temple, who is prepared to actively work for the betterment of the temple. He should be a permanent resident of the Taluk in which the temple situates, who believe in idolatry. In view of the provisions in Clause 3 of Ext.P5 notification, active politicians or those holding official positions of political parties

or those who are busy with their employment are disqualified from being appointed as non-hereditary trustee of the temple. Sub-clauses (a) to (e) and (i) and (j) of Clause 3 of Ext.P5 notification deals with other disqualifications of a person for being appointed as non-hereditary trustee of the temple.

40. In **Gopinatha Menon** (supra) the Division Bench noticed that the complaint of the petitioner, who is the Managing Trustee of the temple in question was that, the persons who are appointed as non-hereditary trustees are disqualified, as they are active politicians or those clouded by allegations referable to financial misconduct. The Division Bench observed that, even if the persons who have been selected and appointed as non-hereditary trustees have any such disqualifications, it may be open to the petitioner to move the Commissioner by pointing out such disqualifications. The Commissioner will then have to hear the petitioner and the persons against whom such allegations are made and conclude whether any such disqualification exists, warranting the removal of those persons. Therefore, the Division Bench dismissed the writ petition *in limine*, leaving that issue open.

41. In **V. Sudharsanan v. Malabar Devaswom Board and others** [judgment dated 20.06.2012 in W.P.(C)Nos.6328 and 7857 of 2012], the Division Bench of this Court was dealing with a case in which one of the contentions raised by the petitioners was that, the persons elected are disqualified from being appointed as non-hereditary trustees of the temple in question, on account of their alleged political allegiance and the fact that they are active political workers. The Division Bench noticed that the said question is essentially a question of fact, which has to be decided, if any such objection is raised. Such decision making process has to be undertaken by the appointing authority. Therefore, if any one among the petitioners has any objection or complaint in that regard, he may place it before the Malabar Devaswom Board, within a period of one month. If any such objection or complaint is received, the competent authority will issue notice to the non-hereditary trustees concerned and give him an opportunity of being heard and take a decision on that issue, in accordance with law.

42. In **Suresh K. v. State of Kerala and others [2021 (2) KLT 885]**, a Division Bench of this Court observed that temple or its precincts cannot be made a place where political

parties should look forward to give political asylum to their workers. The Division Bench noticed that ours being a highly politically sensitive State, hardly any person can be traced, who is completely apolitical or who may not have his own independent political views. There may be persons having permanent political ideologies or views whereas there may be equal number of persons who hold views according to the issues involved. Perhaps that may be the reason why Kerala has become a State of political swinging. The Division Bench made it clear that holding political views or sympathizing with a political denomination cannot be held a disqualification for nominating anyone to such a post. On the facts of the case on hand, the Division Bench held that "even assuming that respondents 7 to 9 have some political leaning or rather they are sympathizers of a political party, that fact will not disentitle them to be considered for appointment as non-hereditary trustees. There is clear distinction between sympathizing with a political party and indulging in active participation in the activities of the party. The taboo under sub-clause (g) of clause 3 of Ext.P2 will be attracted only if respondents 7 to 9 are active

politicians or are office bearers of a political party, for which absolutely no evidence is forthcoming.

43. The provisions of Clauses 3 and 4 of Ext.P5 notification, referred to hereinbefore at paragraph 38, make it explicitly clear that, for appointment as non-hereditary trustee of the temple, the applicant should be a regular worshipper of the temple, who is prepared to actively work for the betterment of the temple. He should be a permanent resident of the Taluk in which the temple situates, who believe in idolatry. Persons who are busy with their employment, office bearers of political parties, active politicians or those indulging in active participation in the activities of a political party cannot aspire appointment as non-hereditary trustee of the temple. Therefore, it is for the 3<sup>rd</sup> respondent Commissioner to take necessary steps to ensure that any appointment made as non-hereditary trustee of the temples under the control of Malabar Devaswom Board is strictly in terms of the disqualification and eligibility clauses provided in Ext.P5 and similar notifications. If found necessary, the format of the application for appointment as a non-hereditary trustee in the temple under the control of Malabar Devaswom Board has to be modified in an appropriate

manner, by requiring the applicant to furnish particulars in terms of the disqualification and eligibility clauses in Ext.P5 and similar notifications. It is for the 3<sup>rd</sup> respondent Commissioner to take necessary steps in this regard, if found necessary, after placing before the Malabar Devaswom Board, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a certified copy of this judgment.

The challenge made in this writ petition against Ext.P5 notification fails. The petitioner is not entitled to any of the reliefs sought for in this writ petition. The writ petition is accordingly dismissed, however, subject to the aforesaid directions.

Sd/-

**ANIL K. NARENDRAN,  
JUDGE**

Sd/-

**P.G. AJITHKUMAR,  
JUDGE**

yd



**APPENDIX OF WP(C) 18638/2021**

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORDER NO. O.A NO. 01/18 DATED 28-05-2018 OF THE THIRD RESPONDENT AND APPROVED SCHEME
- Exhibit P2 A TRUE COPY OF THE ORDER NO. DCPKD/9620/2018-FN1 DATED 30-10-2019 ISSUED BY THE DISTRICT COLLECTOR, PALAKKAD
- Exhibit P3 A TRUE COPY OF THE ORDER DCPKD/9620(2018-FN1 DATED 20-03-2021 ISSUED BY THE DISTRICT COLLECTOR PKD (JUST PRIOR TO THE DEATH OF SANKARA ACHAN) REVISING THE LIST OF KINGS IN RANK ALONG WITH TYPED COPY.
- Exhibit P3A A TRUE COPY OF LETTER OF PALAKKATTUSSERY SEVANA SAMAJAM DATED 17-01-2021 TO THE DISTRICT COLLECTOR, PALAKKAD
- Exhibit P4 A TRUE COPY OF THE ORDER OF STAY DATED 21-06-2021 IN WPC 4109/2021
- Exhibit P4A A TRUE COPY OF LETTER OF THE PETITIONER ADDRESSED TO THE THIRD RESPONDENT AND OTHERS DATED 3-5-2021
- Exhibit P5 A TRUE COPY OF THE NOTICE NO. H6 2798/2021/MDB DATED 26-07-2021 ISSUED BY THE THIRD RESPONDENT ALONG WITH TYPED COPY

RESPONDENT EXHIBITS

- Exhibit R3(A) TRUE COPY OF THE APPLICATION DATED 25/06/2021 OF EXECUTIVE OFFICER SUBMITTED BEFORE THE BOARD
- Exhibit R3(B) TRUE COPY OF THE STATEMENT SHOWING THE ANNUAL INCOME OF THE TEMPLE FOR THE YEAR 2018
- Exhibit R3(C) TRUE COPY OF THE COMMUNICATION ISSUED BY THE TAHSILDAR TO THE DISTRICT COLLECTOR, PALAKKAD