

Blatant Violation Of Natural Justice: Karnataka HC Permits Dismissed Archak At Bhoga Nandishwara Temple To Perform Duties Until Enquiry Is Completed

2022 LiveLaw (Kar) 471

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
M. NAGAPRASANNA; J.**

**WRIT PETITION NO. 20999 OF 2022; 2 NOVEMBER, 2022
ASHVEEJA T.C. *versus* ENDOWMENT COMMISSIONER**

Petitioner by Rajaram T., Advocate.

Respondents by B.V. Krishna, AGA

ORDER

The petitioner is before this Court calling in question an order dated 27.09.2022 which dismisses the petitioner from services.

2. Heard the learned senior counsel Sri.Jayakumar.S.Patil appearing for the petitioner and Sri.B.V.Krishna, learned Additional Government Advocate appearing for the respondents.

3. Brief facts that leads the petitioner to this Court in the subject petition as borne out from the pleadings are as follows:

The petitioner is appointed as Archak in Sri.Boganandeeshwara Temple, Nandi village, Chikkaballapur pursuant to a consent being rendered by the 1st respondent. On 5.8.2015 a formal appointment order was issued by the Government appointing the petitioner as an Archak of the said temple. Things standing thus, on 23.12.2020 anonymous complaints emerge against the petitioner alleging certain irregularities in the performance of his duties as Archak in the temple, pursuant to which, a show cause notice comes to be issued against the petitioner on 24.12.2020 by the 1st respondent. The petitioner claims to have submitted his reply to the said show cause notice on 3.1.2021 and proceedings were conducted by the 1st respondent and the result of the proceedings was placing the petitioner under suspension.

4. Later, it transpires that no enquiry was conducted for over a year. The petitioner then, knocks the doors of this Court in Writ Petition No.8668 of 2022 seeking quashment of the order of suspension, which was passed close to an year ago by the time he approached this Court in the said petition. This Court, by an order dated 22.8.2022 passed the following order:

“3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant a limited indulgence in the matter as under and for the following reasons:

(a) It would be profitable to recall that historically, “...In the later Vedic period a compromise was effected by sanctioning the use of liquors at ceremonial and sacrificial functions only, while condemning its common usage...”¹. There are a few temples in the country such as Temple of Kaal Bhairava in Ujjain (Madhya Pradesh) & Kali Temple at Patiala (Punjab) wherein, a particular kind of liquor is ritualistically offered to the deities and later distributed to the willing devotees. However, that is not the case with Sri. Bhoganandeeshwara Temple in which the petitioner has been the Archak.

(b) It hardly needs to be stated that several religious scriptures prohibit consumption of liquor. The Hindu Shaastraas define the following seven things as the most powerful addictions that can affect any person. Here they are.

¹ Somasundaram O, Raghavan D. V. & Murthy A. G, ‘Drinking habits in ancient India’, Indian Journal of Psychiatry, Vol. 58(1), pp 93–96, (2016)

*“dyuta maamsa suraa veshyaa
Kheta chourya paraanganaah
mahaapaapaani saptava
vyasanaani tyajetbudhah”*

The first one is Dyuta, which means gambling; the second one is maamsa meaning meat eating; the third one is suraa which means consumption of liquor; the fourth one is veshyaa which means prostitution; the fifth one is kheta which means hunting for pleasure; the sixth one is chourya which means stealing; & the seventh one is paraangana which means eloping with other's wives.

(c) Learned AGA is more than justified in contending that the newly added provisions of Section 10(A) of the 1997 Act proscribe 'sapta vyanasas', i.e., seven sins, one of them being consumption of liquor (these seven sins do not exactly approximate to the Shaastri prohibitions). The said Section has the following text:

“Disqualification of Archaks.- A person shall be disqualified for being appointed as Archak or being continued as Archak if he,- (a) is suffering from any virulent or contagious disease; or (b) is unable to recite Vedic mantras or Shlokas relating to the rituals in temple concerned with clarity and without any fault, other than temples, where reciting of vedic Mantras or Shlokas is not compulsory or mandatory; (c) is not free from 'Sapta Vyanasas'.

Explanation.- The expression 'Sapta Vyanasas' means gambling, consuming intoxicating liquor and drugs, smoking, immoral sexual conduct, involved in heinous crime, stealing and cheating.”

Therefore, the impugned notice & suspension order cannot be readily voided for askance.

(d) The above having been said, one more aspect needs to be clarified: the impugned proceedings are initiated on the basis an anonymous letter and a photograph depicting petitioner holding bottles of liquor. However, it is the contention of petitioner that these photographs are morphed ones. **Therefore, there has to be a reasonable enquiry into the matter, cannot be disputed. That enquiry, by its nature cannot be permitted to be dragged on for months together, as rightly contended by Mr. Jayakumar S Patil, learned Sr. Advocate appearing for the petitioner. There is force in the said submission. Now that about one & a half year having lapsed, no progress is reported in the enquiry. More often than not the poor archakas depend upon 'Thatte Kasu' or the offerings to keep their life boat afloat in these costly days. Therefore, suspension cannot be continued endlessly.**

(e) **Even in service law, the Apex Court in AJAY KUMAR CHOUDHARY vs. UNION OF INDIA, (2015) 7 SCC 291, held that suspension cannot continue indefinitely, contemplating or pending disciplinary enquiry. There is logic, reason & justice for such observations coming from highest Court of the country. If that be so, there ought to have been review of the suspension order periodically, at least each spell not extending beyond six months. An argument to the contrary cannot be countenanced without straining the rules of reason, justice & fairplay.**

In the above circumstances, this petition succeeds in part; a Writ of Mandamus issues to the 2nd respondent to accomplish the enquiry in question within a period of two weeks from the date a copy of this order is produced, failing which, the suspension of the petitioner shall be treated as having been rescinded and he will be permitted to discharge duties of archakship as before, subject to outcome of the delayed enquiry.

(Emphasis supplied)

A mandamus was issued to the 2nd respondent to complete the enquiry within a period of two weeks from the date of receipt of the copy of the said order, failing which, suspension of the petitioner would be treated as having been rescinded and he would be permitted to

discharge his duties as Archak of the temple. After the passage of the order what comes about is the order of dismissal without holding any enquiry, as was directed by this Court in the aforesaid petition. It is this order of dismissal that is called in question in the subject petition.

5. Learned senior counsel Sri.Jayakumar S Patil, taking this Court through the documents appended to the petition would seek to demonstrate on the merit of the matter that the petitioner is not guilty of any misconduct as is alleged and has been framed by forces that are inimical to his presence in the temple. He would further contend that this Court has clearly directed completion of enquiry within two weeks. The enquiry is not completed and an order of dismissal is passed without hearing the petitioner and would seek the petition be allowed and the impugned order be quashed.

6. Learned Additional Government Advocate representing the respondents though would seek to defend the action, would admit the position that the petitioner has not been heard pursuant to the order passed by this Court on 22.8.2022 and the order comes to be passed immediately thereafter by dismissing the petitioner from the duties of Archak.

7. I have given my anxious consideration to the submissions made by the learned counsel for both the parties and have perused the material on record.

8. The afore-narrated facts of the appointment of the petitioner, the generation of complaints, issuance of show cause notice and conduct of partial enquiry, are all not in dispute. This Court by an order dated 22.8.2022 had passed the afore-quoted order, whereby this Court directed completion of enquiry within two weeks from the date of receipt of the copy of the order and if the enquiry would not be completed within two weeks, the suspension would automatically get revoked and the petitioner would be permitted to discharge his duties.

9. It is admitted that no enquiry was conducted pursuant to the order passed by this Court nor the petitioner was notified for any enquiry to be conducted pursuant to the said order. What comes about is an order dismissing the petitioner from the duties of Archak without holding any enquiry as was directed by this Court. Therefore, the order not only runs counter to the order passed by this Court on 22.8.2022, but is in blatant violation of the principles of natural justice and denial of opportunity to defend himself. On these reasons, the order of dismissal is rendered unsustainable and requires to be obliterated. Obliteration of the order will result in a direction of permitting the petitioner to perform his duties subject to the outcome of the enquiry. This direction is issued in the peculiar facts of the case, for the reason that the respondents seek to overreach the earlier order by passing an order of dismissal.

10. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is allowed.

(ii) Impugned order dated 27.09.2022 dismissing the petitioner from service stands quashed.

(iii) The respondents are directed to afford an opportunity of hearing to the petitioner and complete the enquiry as was directed by this Court in the aforesaid petition within two weeks from today.

(iv) Till such time, the petitioner shall be permitted to perform as Archak in the temple which would be subject to the result of the enquiry.