

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR. JUSTICE K.HARIPAL

FRIDAY, THE 19TH DAY OF MARCH 2021 / 28TH PHALGUNA, 1942

WP(C).No.14471 OF 2020(H)

PETITIONER/S:

SURESH.K  
AGED 49 YEARS  
S/O NARAYANAN (LATE), KARUTHAT HOUSE, B.P. ANGADY P.O.,  
THIRUR, MALAPPURAM DISTRICT

BY ADVS.  
SRI.J.JULIAN XAVIER  
SRI.FIROZ K.ROBIN  
SRI.PIOUS MATHEW  
SRI.ROY JOSEPH  
SMT.AANNIES MATHEW  
SRI.E.HARIDAS

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY, REVENUE  
(DEVASWOM)DEPARTMENT, SECRETARIAT, GOVT.PRESS P.O.,  
THIRUVANANTHAPURAM-695 001
- 2 MALABAR DEVASWOM BOARD,  
HOUSEFED COMPLEX, ERANHIPALAM P.O., KOZHIKODE-673 006,  
REPRESENTED BY ITS PRESIDENT
- 3 COMMISSIONER,  
MALABAR DEVASWOM BOARD, HOUSEFED COMPLEX, ERANHIPALAM  
P.O., KOZHIKODE-673 006
- 4 THE ASSISTANT COMMISSIONER,  
MALABAR DEVASWOM BOARD, THIRUR P.O, PIN-676 101

- 5        INPSECTOR,  
          OFFICE OF THE INSPECTOR, MALABAR DEVASWOM BOARD,  
          MANJERI, PIN-676 401
  
  - 6        THE EXECUTIVE OFFICER  
          SREE VAIRAMCODE BHAGAVATHI DEVASWOM, VAIRAMCODE P.O.,  
          MALAPPURAM-676 301
  
  - 7        RAJESH.T.J.,  
          S/O. JANARDHANAN NAIR, KADENGAL HOUSE, KURUMBATHOOR  
          P.O., THIRUNAVAYA-676 301
  
  - 8        SUBRAMANYAN.V.  
          S/O. KUMARAN.V., VALIYIL HOUSE, THEKKAN  
          KATTOOR, VENGALLOOR P.O., PIN-676 102
  
  - 9        PREMAN.A.K.,  
          S/O. VELAYUDHAN.A.K., AYINIKOOTTIL HOUSE,  
          VALIYAPARAPPUR, ANANTHAVOOR P.O., PIN-676 301
- R1 BY SR.GP SRI. RENIL ANTO KANDAMKULATHY  
R2 TO R6 BY SRI.R.LAKSHMI NARAYAN  
R7-9 BY ADV. SRI.M.P.PRABHAKARAN (PALAKKAD)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-02-2021, THE COURT ON 19-03-2021 DELIVERED THE FOLLOWING:

**JUDGMENT**

*Haripal, J.*

Petitioner is a devotee of Sree Vairamcode Bhagavathi Temple, Thirunavaya in Malappuram district and claims to be interested in the affairs of the Sree Vairamcode Bhagavathi devaswom. According to the petitioner, the temple is governed by a scheme framed in O.A.No.11/81 and the administration is vested with the Board of Trustees consisting of a hereditary trustee and four non-hereditary trustees. The temple comes under the supervision of the Malabar Devaswom Board. From 2009 till 2019 there was no Trust Board for the temple. In 2013, when steps were taken for appointing trustees, W.P.(C) No.30075/2014 was filed by the devotees, which was disposed of by the Ext.P1 judgment. Thereafter, Ext.P2 notification was issued by the 3<sup>rd</sup> respondent inviting applications to fill up the post of non-hereditary trustees. Pursuant to the notification, 15 applications were received, which were examined by the 5<sup>th</sup> respondent, who conducted interview and gave the Ext.P3 report. Basing on Ext.P3,

the 4<sup>th</sup> respondent gave the Ext.P4 report to the 3<sup>rd</sup> respondent following which Ext.P5 resolution was taken by the Malabar Devaswom Board and thereafter the Ext.P6 order was issued appointing respondents 7 to 9 and one Radhakrishnan as non-hereditary trustees. The petitioner is aggrieved by the Ext.P6. Challenging the same he moved this Court under Article 226 of the Constitution of India. In Ext.P10 judgment, this Court observed that it is an order of the Board revisable under Section 99 of the Madras Hindu Religious and Charitable Endowments Act, 1951, that since an alternative remedy is available to the petitioner, relegating him to invoke that remedy, the petition was disposed of. On the basis of that decision, the petitioner moved the 1<sup>st</sup> respondent with Ext.P11 revision. But, by Ext.P12 order, the Government rejected the contentions of the petitioner and that prompted him to move this Court again, seeking the following reliefs:-

- “i. To call for the records connected with the case leading to Exts.P5, P6 and P12 and quash the originals of Exts.P5, P6 and P12 by issuing a writ of certiorari;
- ii. To declare that the selection of respondents 7 to 9 who are active politicians are ineligible to be appointed as non-hereditary trustees of Sree Vairamcode Bhagavathi

Devaswom in the light of Clause 3(g) of Ext.P2 notification;

- iii. To direct the 3<sup>rd</sup> respondent to interdict the respondents 7 to 9 from taking any policy decision in regard to the administration of Sree Vairamcode Bhagavathi Devaswom.”

2. The main grievance of the petitioner is that respondents 7 to 9 were appointed violating the stipulations in Ext.P2 notification. As per sub-clause (g) of clause 3 of the said notification, active politicians or office bearers of political parties shall not be considered for appointment as non-hereditary trustees. But, except the said Radhakrishnan in Ext.P6, respondents 7 to 9 are active politicians. This vital aspect raised by him before the Government was not considered. Therefore, Ext.P6 is liable to be set aside.

3. Supporting the argument, the petitioner has produced Exts.P7 to P9 photographs. According to the learned counsel for the petitioner, the petitioner had also produced a CD in support of the contentions. According to the petitioner, active politicians and office bearers of political parties should not have been considered for appointment of

non-hereditary trustees. He has a further contention that such nominations were made without conducting due enquiry by the 5<sup>th</sup> respondent and also without consulting the hereditary trustees. These are adverse to the interest of the Devaswom and the temple and therefore, he prayed for quashing Ext.P6.

4. We heard the learned counsel for the petitioner and also the learned standing counsel for the Devaswom Board.

5. We have no doubt that the temple or its precincts cannot be made a place where political parties should look forward to give political asylum to their workers. At the same time, 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. We said this to make it clear that holding political views or sympathizing with a political denomination

cannot be held a disqualification for nominating anyone to such a post.

6. It is the common case that the 3<sup>rd</sup> respondent had invited applications from persons who are not active politicians or office bearers of political parties, among other qualifications, to be considered for the post of non-hereditary trustees in Sree Vairamcode Bhagavathi Temple. Fifteen applications were received which were got examined through the 5<sup>th</sup> respondent, who, after conducting interview and considering the affidavits filed by them, gave the Ext.P3 report clearing all of them.

7. A perusal of Ext.P3 would indicate that the 5<sup>th</sup> respondent had met all the applicants and personal profiles were created; affidavits were also obtained from them. Though he concluded that all the fifteen applicants are entitled to be appointed as non-hereditary trustees, it seems that at least one person, i.e. serial No.8 Suresh Kumar, is a lawyer by profession, who is reportedly working as the Thalakkod Mandalam President of the Indian National Congress. Even the said Suresh Kumar has been cleared by the 5<sup>th</sup> respondent for nomination. Fortunately, his name does not appear among the four persons who were shortlisted.

8. It is reported by the Inspector that all of them do not hold any office of a political party. It was in this background that the Ext.P4 report was sent and Ext.P5 resolution was adopted by the Devaswom Board, which ultimately led to the passing of the Ext.P6 order by which the said Radhakrishnan and respondents 7 to 9 are appointed as non-hereditary trustees.

9. When the Government had considered the Ext.P11 revision filed by the petitioner and passed the Ext.P12 order, the relevant aspects were considered; that order was passed after hearing both sides. The petitioner had also highlighted the photographs to buttress his contention that they are active politicians. The very same argument is raised by the learned counsel before this Court. But, as a matter of fact, it is trite that when such an allegation is raised by the petitioner, he is expected to bring in foolproof evidence to support the contention. It seems that photographs like Exts.P7 to P9 were produced before the Government, which were not acted upon. Basing on such an evidence, which is not specific but vague, this Court also cannot accept the arguments of the petitioner. The identity



of the said persons is not ascertainable by this Court. Secondly, 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 they are active politicians or are office bearers of a political party, for which absolutely no evidence is forthcoming.

10. It was also urged that while making appointments the hereditary trustee was not consulted by the Devaswom Board. In fact, such a contention is not available to the petitioner. He has no case that he is a hereditary trustee of the Devaswom or a person authorised by the hereditary trustee. Such a right for consultation as provided under Section 39(2) of the Madras Hindu Religious and Charitable Endowments Act is available only to a hereditary trustee. The petitioner, though claimed to be a devotee, is a stranger as far as the provision under Section 39(2) is

concerned. We also notice that the petitioner had no such case in Ext.P11 Revision.

11. It is also contended that the 8<sup>th</sup> respondent has educational qualification only upto 7<sup>th</sup> standard whereas there are many candidates who are having qualifications like degree and above, and therefore, his nomination is bad. This argument also cannot hold good so long as there is no such prescribed minimum general educational qualification fixed by the statute. There is no such specification in Ext.P2 also.

To sum up, the petitioner could not make out any valid reason, or ground, to interfere with the appointment of respondents 7 to 9 as non-hereditary trustees of the temple and the writ petition is bereft of merits and liable to be dismissed. Dismissed. No costs.

Sd/-

**C.T. RAVIKUMAR**  
**JUDGE**

Sd/-

**K.HARIPAL**  
**JUDGE**

okb/15.2

//True copy// P.S. to Judge

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE JUDGMENT DATED 20.2.2019 IN WPC NO.30075/2014
- EXHIBIT P2 TRUE COPY OF THE NOTIFICATION DATED 10.5.2019 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P3 TRUE COPY OF THE REPORT DATED 14.8.2019 RECEIVED UNDER RTI ACT
- EXHIBIT P4 TRUE COPY OF THE REPORT SUBMITTED BY THE 4TH RESPONDENT TO THE 3RD RESPONDENT
- EXHIBIT P5 TRUE COPY OF THE DECISION NO.1 DATED 21.8.2019 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P6 TRUE COPY OF THE PROCEEDINGS DATED 30.8.2019 ISSUED BY THE 3RD RESPONDENT
- EXHIBIT P7 PHOTOS SHOWING THE PARTICIPATION OF SRI.RAJESH T.J.IN THE DISTRICT COMMITTEE MEETING OF CPI, MALAPPURAM DISTRICT
- EXHIBIT P8 THE 8TH RESPONDENT SRI.SUBRAMANIAN V IS ALSO AN ACTIVE POLITICIAN AND THE PHOTO SHOWING THE PARTICIPATION OF SRI, SUBHRAMANIAN IN PUBLIC PROCESSION AS PARTY WORKER
- EXHIBIT P9 PHOTO SHOWING THE MEMBERSHIP CAMPAIGN CONDUCTED BY SRI.PREMAN A.K.
- EXHIBIT P10 TRUE COPY OF THE JUDGMENT DATED 1.10.2019 IN WPC NO.26170/2019 OF THE HIGH COURT OF KERALA
- EXHIBIT P11 TRUE COPY OF THE REVISION PETITION DATED 15.10.2019 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

- EXHIBIT P12                    TRUE COPY OF THE ORDER NO.GO(RT) 2360/2020/RD  
DATED 2.7.2020 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P13                    TRUE COPY OF THE LETTER DATED 1.6.2020 ISSUED  
BY THE DEPUTY COMMISSIONER MALABAR DEVASWOM  
BOARD KOZHIKODE TO THE PETITIONER
- EXHIBIT P14                    TRUE COPY OF THE AGREEMENT NOTE SUBMITTED  
BEFORE THE 1ST RESPONDENT DATED 7.2.2020
- EXHIBIT P15                    TRUE COPY OF THE ORDER NO.917/2009 RD DATED  
4.3.2009 ISSUED BY THE 1ST RESPONDENT