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W.P.No.3371 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.2.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.3371 of 2022 &

WMP Nos.3481, 3482 & 3484 of 2022

1. Indic Collective Trust
5E, Bharat Ganga Apartments
Mahalakshmi Nagar 4th Cross Street
Adambakkam, Chennai 600 088
Rep. by its President T.R.Ramesh.

2. T.R.Ramesh

.. Petitioner

vs

1. The State of Tamil Nadu
Rep. by Principal Secretary
Tourism, Culture and Religious
Endowments Department
Secretariat, Fort St. George
Chennai 600 009.

2. The Commissioner
Hindu Religious and Charitable
Endowments Department
Nungambakkam High Road
Chennai 600 034.

.. Respondents



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Prayer: Petition filed under Article 226 of The Constitution of India praying for a writ of Mandamus directing the respondents to recall all Executive Officers who are functioning without valid appointment orders, without valid reasons for their appointment or appointed under Section 43-A or 45 or have been appointed before the Conditions for Appointment of Executive Officers Rules, 2015 was notified and order handover of the temples to the trustees/communities/sampradhayas (or their descendants) from whose hands the temples were taken over by the authorities in the Hindu Religious and Charitable Endowments Department.

For Petitioners : Second Petitioner
Appearing-in-Person
For Respondents : Mr.NRR.Arun Natarajan
Spl. Govt. Pleader (HR&CE)

ORDER

(Order of the Court was made by
the Hon'ble Chief Justice)

We have heard the parties.

2. The writ petition has been filed seeking a direction to the respondents to recall all the Executive Officers, who are functioning in different temples without any valid appointment.



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3. The second petitioner, appearing in person, submits that in non hereditary temples, the Commissioner, Hindu Religious and Charitable Endowment Department appointed Executive Officers without authority of law and even if such appointment is made, they continue to be in service beyond the period of five years, which is not permissible. The records show that the appointment was made without disclosing the period and the Executive Officers so appointed were allowed to continue beyond the period of five years in violation of the relevant Rules.

4. According to the second petitioner, such appointments are in violation of the decision of the Supreme Court in the case of *Sri-la-Sri Subramania Desika Pandara Sannati Vs. State of Madras [AIR 1965 SC 1683]* wherein the Apex Court held that the Deputy Commissioner, the Commissioner or the Court, as the case may be, is not bound, in framing a scheme, to appoint an Executive Officer in every case and a case must be made out for such appointment.



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5. The learned Counsel, further relying upon the decision of the Hon'ble Supreme Court in *Dr.Subramanian Swamy and others Vs. State of Tamil Nadu and others [(2014) 5 SCC 75]*, would submit that if only the administration of a temple is not proper, it can be superseded.

6. It is his further submission that the said judgment of the Supreme Court does not permit the appointment of Executive Officers unless the conditions are satisfied and that too, not for indefinite period. The said judgment of the Supreme Court has been ignored by the respondents in appointing the Executive Officers and continuing them in the appointment so made for years together. A prayer is made to cause interference with the order of appointment of the Executive Officers and accept the writ petition with an interim order.

7. A reference to Sections 43A and 45 of the Hindu Religious and Charitable Endowments Act, 1959 (Act of 1959) has been given to make it clear that the Commissioner can exercise some powers.



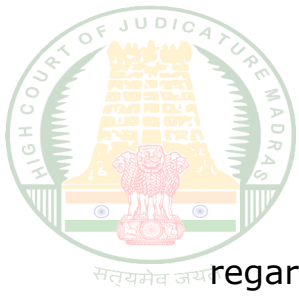
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8. The writ petition has been contested by the side opposite.

9. It is a case where not in one, but in more than 600 temples, the Executive Officers were appointed from time to time by the Commissioner, Hindu Religious and Charitable Endowments Department in the absence of appointment or nomination of trustees. It is not in dispute that in most of the non hereditary temples in the State of Tamil Nadu, the trustees have not been appointed/nominated for the past 10 - 12 years. In the absence of the trustees in the non hereditary temples, the appointment of Executive Officers was made by the Commissioner invoking the power under Section 43A and Section 45 of the Act of 1959.

10. The issue regarding the appointment of trustees was taken up and this Court was seized of the matter and certain directions were also given to expedite the process of appointment of trustees. This Court, while addressing a similar issue in W.P.No.23070 of 2021 in the order dated 21.2.2022, observed



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regarding the process of appointment/nomination of trustees, which is at two levels, one for those temples having revenue more than Rs.10 lakh and the other having revenue less than Rs.10 lakh. The process of appointment of trustees has already begun and is nearing completion.

11. In such circumstances, we do not find any reason to maintain the writ petition, after a lapse of 10 - 12 years, challenging the appointment of Executive Officers, knowing fully well that in the absence of appointing/nominating the trustees, the Executive Officers were appointed.

12. Sections 43A and 45 of the Act of 1959 are quoted hereunder for ready reference :

"43-A. Appointment and duties of executive officers in temples under maths.—

(1) Notwithstanding anything contained in Section 45 or any other provision in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any temple under the control of a math.

(2) The executive officer shall be subject to the



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control of the trustee of the math and shall exercise such powers and discharge such duties as may be prescribed.

(3) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive officer.

.....

45. Appointment and duties of executive officer—

(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math.

Explanation.—In this section "math" shall not include a temple under the control of a math.

(2) The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner:

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in sub-section (1) shall be assigned to the executive officer.

(3) The Commissioner may define the powers and duties which may be exercised and discharged respectively by the executive officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive Officer."



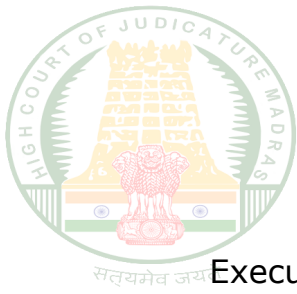
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13. Section 43A of the Act of 1959 gives power to the Commissioner for appointment of Executive Officer for any temple under the control of the math. It is, however, subject to the control of trustees and the Commissioner is having power to suspend, remove and dismiss the Executive Officers also. Section 45 of the Act of 1959 allows appointment of the Executive Officers in religious institution. As a matter of fact, the same petitioner, representing M/s.Temple Worshippers Society, had earlier challenged the conditions of appointment of Executive Officers Rules, 2015, by way of W.P.No.2290 of 2017, even while upholding the constitutional validity of the Rules, a Division Bench of this Court held as follows:-

*"Section 45 read with Section 74 makes it clear that there is already sufficient provisions in the said parent Act for appointment of Executive Officers for **every institution** (underlining done by us for supplying emphasis). In the judgment of the Supreme Court reported in **2014 (V) SCC 75 (Dr.Subramanian Swamy and others vs. State of Tamil Nadu and others)**, the Hon'ble Supreme Court has expressed its anguish and stated that Executive Officers need to be appointed by framing and prescribing Rules for the same."*

Therefore, it cannot be said that the appointment of the



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Executive Officers was in violation of the relevant provisions of law.

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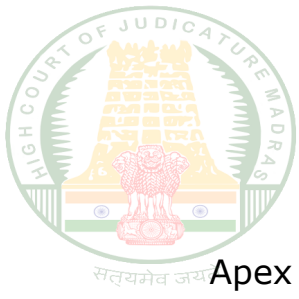
14. A reference to Rule 3(x) of the Conditions for Appointment of Executive Officers Rules, 2015 has been made, which is quoted as hereunder :

"3. Where the Commissioner either suo-motu or upon the report received from the Joint Commissioner or Deputy Commissioner or Assistant Commissioner having jurisdiction, considers it necessary,-

...

(x) for any other reason, the Commissioner may, after holding such inquiry as he may consider it necessary and expedient, in the interest of such religious institution, by order, appoint an Executive Officer for such religious institution, for such period or periods as may be specified by the Commissioner in the order not exceeding a period of five years at a time."

15. The Rules aforesaid have no application to the facts of the case, because the appointment of the Executive Officers is not on account of malpractice or mismanagement of the trustees of the temple, but, for the reason given above, namely in the absence of appointing/nominating the trustees. Therefore, the judgment of the



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Apex Court in the case of *Sri-la-Sri Subramania Desika Pandara Sannati (cited supra)* shall not be applicable to the facts of this case. It was in reference to the temples having mismanagement or malpractice or for similar other reasons, which is not the cause for appointment of the Executive Officer in this case.

16. In view of the above, we do not find that the said judgment of the Apex Court has been violated by the respondents while appointing the Executive Officers and otherwise, the second petitioner failed to justify the laches in filing the writ petition because in the absence of appointment or nomination of trustees in the non hereditary temples, the Executive Officers were appointed long back. The challenge to their appointment has now been made after a lapse of 10 - 12 years. The writ petition is hit by laches.

17. For all the above reasons, we do not find any ground to grant the prayer made in the writ petition.



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18. Accordingly, the writ petition is dismissed. Consequently, the connected WMPs are also dismissed. There will be no order as to costs.

(M.N.B., CJ.) (D.B.C.J.)
23.2.2022

Index : Yes/No

To:

1. The Principal Secretary
Tourism, Culture and Religious Endowments Department
Secretariat, Fort St. George
Chennai 600 009.
2. The Commissioner
Hindu Religious and Charitable Endowments Department
Nungambakkam High Road
Chennai 600 034.

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