

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2020

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.P(MD).No.10903 of 2020

and

W.M.P.(MD).Nos.9581 & 9582 of 2020

T.R.Ramesh

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai.

2.The Executive Officer/Fit Person,
Sri Dhandayuthapani Swami Temple, Palani.

3.The Secretary to Government,
Hindu Religious and Charitable
Endowments Department,
Secretariat, Chennai-9.

... Respondents

(3rd respondent is suo motu impleaded
vide court's order dated 22.09.2020)

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned Tender Notice bearing R.C No.805/2020/Civil, dated 20.08.2020, on the file of the second respondent and quash the same.

For Petitioner : Mr.S.Parthasarathy
For Respondents : Mr.K.P.Narayanakumar
Special Government Pleader for R1
Mr.V.R.Shanmuganathan for R2

ORDER

The question that arises for my consideration in this writ petition is whether the Executive Officer of Arulmighu Dhandayuthapani Swami Temple, Palani is competent to issue the impugned tender notification dated 20.08.2020 inviting sealed tenders for providing house keeping service in the Hill temple and the institutions attached to it.

2.The writ petitioner contends that the devotees are entitled to offer voluntary service known as "Uzhavara pani". By entrusting the cleaning and maintenance works to outsiders in the name of house keeping contract, the temple management has infringed the rights of the devotees. The second respondent temple is not having a regular trust board for almost a decade. The Executive Officer of the temple acts as ex-officio Fit Person. Such an official cannot take major decisions having financial implications. The impugned tender notification is violative of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act").

3.The second respondent has filed a detailed counter affidavit. The first objection raised by the second respondent is that the petitioner is not an aggrieved individual. He cannot maintain this writ petition before this Court. If at all the petitioner wants to espouse the subject cause, he must file a public interest litigation. The second respondent temple is a renowned temple thronged by lakhs of devotees. Catering to sanitation, maintenance and cleanliness of the institution is of supreme importance. It requires systematic deployment of manpower. The house keeping contract system is already in vogue. Since the period of contract had expired, it became necessary to issue the impugned notification. In any event, the temple management permits performance of voluntary service by the devotees such as cleaning of the dining hall. As on date, the temple has no board of trustees. A Fit Person is entitled to discharge the functions of the trust board. Therefore, the impugned notification cannot be faulted.

4.The learned Special Government Pleader appearing for the first and third respondents adopted the stand taken in the counter affidavit filed by the second respondent. The counsel on either side reiterated all the contentions set out in the respective pleadings.

5. Let me first consider the preliminary objection taken by the counsel for the respondents as regards the locus standi of the writ petitioner and the maintainability of the writ petition. The respondents drew my attention to the order dated 12.08.2020 made in WP(MD)Nos.11403 to 11405 of 2018. In those writ petitions, similar notifications were questioned. The ground of challenge was that the experience condition incorporated in the tender notification would shut out competition. Before I could consider the writ petitions on merits, it was submitted by the learned Special Government Pleader appearing for the respondents that the tender notifications were issued way back in the year 2018 and that it was proposed to issue fresh notification. I therefore dismissed the writ petitions on the ground that the subject matter had become infructuous. Of course, I had also held that the petitioner therein did not have locus standi. That was because, though the contention was that the threshold prescribed in the notification was very high, the petitioner therein had not anywhere pleaded that its members were having at least some experience in the subject matter. It was in that factual context I held that the petitioner did not have any standing. The said case arose out of a challenge by an association of contractors. They had business interest. But the case on hand is completely different. The petitioner herein has approached this Court in his capacity as a devotee and as a worshipper. The circumstances which govern the approach of this Court in a

commercial context will have absolutely no relevance now. The petitioner is a person having interest within the meaning of Section 6 (15) of the Act. The learned counsel for the temple remarked that the expression "Uzhavara pani" does not figure anywhere in the Act. The statute may be silent but spiritual literature contains several references to this. For instance, in Periyapuram, Sekkizhar Peruman sings on Appar as follows :

"மார்பாரப் பொழிகண்ணீர் மழைவாரும் திருவடிவம் மதுரவாக்கிற்
சேர்வாகுந் திருவாயிற் தீந்தமிழின் மாலைகளுஞ் செம்பொற்றாளே
சார்வான திருமனமும் உழவாரத் தணிப் படையும் தாமும் ஆகிப்
பார்வாழத் திருவீதிப் பணிசெய்து பணிந்தேத்திப் பரவிச் செல்வார்."

Appar is portrayed as carrying the implement for carrying out "Uzhavara pani". Shaivism speaks of four modes of worship, namely, Sariyai, Kiriya, Yogam and Gnanam. "Sariyai" includes physical service, namely, Uzhavara pani. House keeping contract is the commercial counterpart of Uzhavara pani.

6. Article 25 of the Constitution confers the fundamental right to freely practise one's religion. In the case of Hindus, it would include the right to perform Uzhavara pani. The temple management can of course regulate it, but cannot deny it. The petitioner has thus shown that he has a clear and definite interest in the subject matter of the tender notification and that is sufficient to

confer standing on him to maintain this writ petition. That apart, as a worshipper, the petitioner is also entitled to insist that the affairs of the temple are conducted in accordance with the provisions of the Act. The specific contention of the petitioner is that the second respondent is not entitled to issue the impugned notification. Since the petitioner is a person having interest, it is not necessary that the petitioner should raise these issues only in a public interest litigation. I have taken the very same view vide order dated 24.07.2020 in **WP(MD)No. 7661 of 2020 (M.Imam Hussain vs. Government of Tamil Nadu and three others)**. When a similar objection was taken, I held that the *locus standi* of the petitioner therein cannot be doubted since he is a practising lawyer and a person interested within the meaning of Section 3(k) of the Waqf Act, 1995.

7.The impugned notification was issued by the then Executive Officer of the temple Thiru.Jayachandra Banu Reddy, I.A.S. He was posted as Executive Officer vide G.O Rt.No.4004, Public (Special.A) Department dated 20.09.2019 r/w G.O.Rt No.3999, Public (Special.A) Department, dated 20.09.2019. But as per Section 45 of the Act, it is the Commissioner who has been conferred with the power to appoint Executive Officers. It is submitted by the respondents that the post of Executive Officer which was all along in the rank of Joint Commissioner has been upgraded so as to be manned by a member of the I.A.S cadre. I

wanted to know if by virtue of Section 45(4) of the Act, the Commissioner can take disciplinary action against the Executive Officer of the second respondent temple when the incumbent is an I.A.S officer, the learned counsel for the respondents submitted that this point need not be gone into because Thiru.Jayachandra Banu Reddy had since been transferred and it is presently being manned only by a non I.A.S officer in the rank of a Joint Commissioner.

8.The counsel for the petitioner with a sense of exasperation submitted that the petitioner could not find out under what circumstances appointment of Executive Officer came to be made for the second respondent temple. The reply is that it was done way back in the year 1937 under Madras Act 2 of 1927. Shri.V.R.Shanmuganathan, the learned counsel for the temple, contended that the same stood saved under Section 118 of the Act.

9.I have serious doubts. As rightly contended by the learned counsel appearing for the petitioner, the relevant provisions can only be Sections 75-A, 75-B and 75-C of the Act. The said provisions read as under :

“75-A.Notifications under Chapter VI-A of Madras Act II of 1927 to continue in enforce. -
Notwithstanding any judgment, decree or order of any Court and notwithstanding anything contained in the Madras Hindu

Religious Endowments Act, 1926 (Madras Act II of 1927), or in the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951), or in this Act, but subject to the provisions of section 75-C, all notifications issued under Chapter VI-A of the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927) and in force immediately before the 30th September 1956 and which have not been subsequently cancelled by the Government, shall continue, and shall be deemed always to have continued, in force up to and inclusive of the 16th July 1965 and for a period of one year thereafter; and accordingly all acts, proceedings or things done or taken under the said Acts or this Act by the Government or by any officer of the Government or by any other authority in pursuance of the said notifications shall, for all purposes, be deemed to be, and to have always been done or taken in accordance with law.

75-B.Further continuance of notifications under Chapter VI-A of Madras Act II of 1927.- Where after the expiry of a period of six months from the 16th July 1965, the Commissioner is satisfied that, in the interests of the administration of any religious institution governed by any of the notifications referred to in section 75-A, it is necessary to continue the notification (hereinafter in this section referred to as the said notification) beyond the date of the expiry of the period of one year from the 16th July 1965, he may, by notice, published in the prescribed manner,

call upon the trustee and all other persons having interest to show cause why the said notification should not be so continued.

(2) Such notice shall state the reasons for the action proposed, and specify a reasonable time, not being less than one month from the date of the issue of such notice, for showing such cause.

(3) The Trustee or any person having interest may, thereupon, prefer any objection he may wish to make against the action proposed.

(4) Such objection shall be in writing and shall reach the Commissioner before the expiry of the time specified in the notice aforesaid, or within such further time as may be granted by the Commissioner.

(5) Where no such objection has been received within the time so specified or granted, the Government may, on receipt of a report from the Commissioner to that effect, by notification declare that the said notification shall continue in force beyond the date of the expiry of the period of one year from the 16th July 1965.

(6) Where any such objections have been received within the time so specified or granted, the Commissioner shall hold an enquiry into the objections in the manner prescribed, and decide whether or not the said notification should be continued as aforesaid.

(7) If the Commissioner decides that the said notification should be continued as aforesaid, he shall make a

report to that effect to the Government, who may, thereupon, by notification, declare that the said notification shall continue in force beyond the date of the expiry of the period of one year from the 16th July 1965.

75-C.Right of suit.- (1) Any trustee or any person having an interest, who is aggrieved by the continuance of a notification under section 75-A or under section 75-B may-

(i) in the case of the continuance of the notification under section 75-A, within sixty days from the 16th July 1965; and

(ii) in the case of the continuance of the notification under section 75-B, within sixty days from the date of the declaration under sub-section (5) or subsection (7) of the said section 75-B;

institute a suit in the Court for the cancellation of such notification and the Government shall cancel the notification if the Court so directs:

Provided that the Court shall have no power to suspend the operation of the notification pending the disposal of the suit.

(2) Any party aggrieved by a decree of the Court under sub-section (1) may, within ninety days from the date of the decree, appeal to the High Court.

(3) Notwithstanding anything contained in section 75-A or section 75-B, if the Government, after taking into consideration such matters relating to the management and administration of the religious institution as may be

prescribed are satisfied that it is no longer necessary to continue a notification continued in force under section 75-A or under section 75-B, they may cancel the notification.

(4) In respect of a religious institution governed by a notification continued in force under section 75-A or section 75-B,-

(a) the scheme of administration, if any, settled and all rules, if any, framed under such scheme shall cease, and shall be deemed always to have ceased, to apply to the institution and shall become, and shall be deemed always to have become, inoperative; and such scheme and rules shall not be revived by reason of the cancellation of the notification under sub-section (1) or sub-section (3);

(b) the Commissioner shall have power and shall be deemed always to have had power to appoint a salaried Executive Officer who shall be a person professing the Hindu religion.]”

The aforesaid provisions came to be considered by the Hon'ble Division Bench in the decision reported in **(1994) 2 MLJ 313 (Sri-la-Sri Shanmuga Desiga Gnanasambanda Pandarasannadhi Avargal vs. The State of Madras)** in an appeal that arose from a statutory suit filed under Section 75(C) of the Act. The Hon'ble Division Bench held as follows :

“26.On the ratio laid down in the decisions referred to above, the enactment of Section 75-A cannot stand the test of Judicial scrutiny. In the present case, by

introducing Section 75-A the Legislature has simply directed the Commissioner of Hindu Religious and Charitable Endowments and Executive Officer of Sri Thiyagarajaswami Temple to disobey or disregard the decision of the highest court of the land in S.D.G. Pandara Sannadhi v. State of Madras (1965) 2 M.L.J. 167. The obvious purpose of Section 75-A extending the impugned notification is to nullify the effect of this decision of the Supreme Court. The object in the explanatory note Ex. B-33 makes no secret of the said fact and in fact the written statements filed on behalf of the Department and the Government aver that the courts scheme was not conducive to the proper administration of the Kattalais or the supervision thereof. The steps were taken to notify. The temple and the various Kattalais attached thereto. After the judgment of the Supreme Court in (1965) 2 M.L.J. 167, the Government felt that the existing state of affairs cannot be allowed to continue and so in the interest of proper administration of all the religious institutions including that of Sri Thiyagarajaswami temple it was imperative to continue the earlier notifications beyond 15.7.1966. No doubt the Legislatures under the Constitution have, within the prescribed limits, power to make laws prospectively as well as retrospectively. By exercise of those powers a legislature can remove the basis of the decision rendered by a competent court thereby rendering the decision ineffective. But no Legislature in the country has power to set aside an individual decision inter-parties and

affect their rights and liabilities alone. In the words of their Lordships of the Supreme Court in Cauvery Water Disputes Tribunal case MANU/SC/0097/1992 : AIR 1992 SC 522 , such an act on the part of the Legislature amounts to exercising the Judicial power of the State and to functioning as an appellate Court or Tribunal. Since notification in G.O. No. 3069, dated 4.8.1956 is simply declared to be valid under Section 75-A this section makes a direct inroad into the judicial powers of the State, and so it has necessarily to be struck down so far as the notification is concerned.

27. Section 75-B of the Act enables the Commissioner to continue any notification which was validated by virtue of Section 75-A beyond 16th July, 1966 after calling upon the trustee concerned to show cause why it should not be so continued. Notification No. 638, dated 25.5.1937 is statutorily extended till 16.7.1965 and for a period of one year later in view of Section 75-A of the Act read with G.O. No. 3069 (Revenue), dated 13.7.1956. Notification No. 2347 (Revenue), dated 13.7.1966 was issued declaring that the Notification No. 638 would continue beyond 15.7.1966. We have already seen that there could be no valid extension of the notification under Section 75-A. Learned Counsel for the appellants next contends that where a notification is quashed its existence ceases. There can be no order continuing that which does not exist. In other words, there can be no law which seeks to extend the provisions of a

rule which is non-est. By the time G.O. No. 2347 (Revenue), dated 13.7.1966 was published, Notification No. 638, dated 25.5.1937, was no longer in existence by virtue of the decision of the Supreme Court. So there is substance in the claim of learned Counsel for the appellants that the G.O. No. 2347 passed under Section 75-B of the Act is not valid.”

The learned counsel appearing for the petitioner submits that in the light of what was held by the Hon'ble Division Bench, the respondents cannot fall back on the earlier notification under Madras Act 2 of 1927. In my view, this contention is correct. Fresh proceedings will have to be issued under Section 45 of the Act.

10.As the Preamble to the Act indicates, Tamil Nadu Act 22 of 1959 is a consolidating piece of legislation. Though Chapter II of the Act catalogues the classes of controlling authorities, with the Commissioner at the apex position, the religious institutions, subject to the provisions of the Act, are to be essentially managed only by the board of trustees. Section 6(22) of the Act defines a trustee as any person or body in whom or in which the administration of the religious institution is vested. The trustees can be hereditary trustees or non hereditary. Since there could be hiatus between the expiry of the term of one trust board and the constitution of the next, the competent authority may appoint a Fit Person to perform the functions of the board of trustees. Charges can be

framed against a trustee for irregularities and pending their disposal, the appropriate authority may place the trustee under suspension and appoint a Fit Person to discharge the duties and perform the functions of the trustee. Though the power of the authority to appoint Fit Person in such circumstances is beyond dispute, the question is whether the Fit Person can continue to be in office indefinitely.

11. The learned counsel for the respondents would contend that the Act has not prescribed any outer time limit. The question is can the competent authority appoint Fit Person for any religious institution say for five years. The answer is obviously 'no'. That would be a total subversion of the statutory scheme laid down in the Act. It was held by the Hon'ble Division Bench in the decision reported in **2016-1 L.W 340 (C.Andiappan and others vs. the Joint Commissioner, Tamil Nadu HR & CE and others)** that the appointment of a Fit Person is always contemplated only as a temporary measure. In **P.R.Thirupathy vs. The Commissioner, HR & CE, 2015 (4) CTC 755**, it was held that the appointment of a Fit Person is for a temporary period to tide over certain difficulties or contingencies. It is in the nature of an interim measure.

12.In the year 2011, there was a change in the political dispensation. As a consequence, the trustees of various temples resigned from the boards creating vacuum in the administration. The bank accounts could not be operated and expenditure for the basic works could not be met. In order to tide over the situation, Executive Officers were appointed as ex-officio Fit Persons vide G.O (Ms) No.223 dated 10.06.2011. We are now in September 2020. More than nine years have gone by. The Executive Officer/Fit Person continues to be at the helm of affairs. The authorities have either not found time or felt it necessary to constitute the board of trustees. Such a state of affairs can only be characterised as subversion of the statutory scheme.

13.A non-hereditary trustee can occupy the office only for a specific period. But in the instant case, for more than nine years and three months, the temple has been under the management of the Executive Officer who doubles as Fit Person. It has been held by the Constitution Bench of the Hon'ble Supreme Court in ***D.C. Wadhwa and Ors. vs. State of Bihar (1987) 1 SCC 378*** that a constitutional authority cannot do indirectly what it is not permitted to do directly. Adoption of any subterfuge was characterised as a fraud on the Constitution. In the said decision, the Apex Court came down heavily on the Government of Bihar for having successively re-promulgated the ordinances. It was observed that

there must not be ordinance-raj in the country. Adopting the same language, I would observe that there should not be any Executive Officer/Fit Person-raj in the second respondent temple.

14.As per Rule 11 of Collection of Income and the Incurring of Expenditure Rules, no expenditure shall be incurred without the written order of the trustee. The trustee shall satisfy himself that the expenditure is necessary and that it has budgetary sanction. The impugned tender notification has considerable financial implications. In the very nature of things, decisions in such matters will have to be taken only by a duly constituted trust board. When the same official combines in himself both the offices of Executive Officer and Fit Person, the mechanism of checks and balances goes. Executive Officers are appointed so that the trustees do not run amok. But if the Executive Officer himself is also made the fit person so that he can discharge the functions of a trustee, and such a situation continues for years together, it is certainly a fraud on the statute.

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15.I may at this juncture refer to the role of Special Officer appointed for Cooperative Societies. The Hon'ble Supreme Court of India in the decision reported in **(2000) 6 SCC 127 (Joint Registrar of Cooperative Societies,**

Kerala vs. T.A.Kuttappan) observed that the role of an administrator is only to bring on an even keel a ship which was in doldrums. He is not vested with the power to enrol new members. This judgment was followed by the Hon'ble Full Bench of the Madras High Court in the decision reported in **2006 (1) CTC 1 (K.Nithyanantham vs. State of Tamil Nadu)** in which Section 89 A of the Tamil Nadu Cooperative Societies Act was struck down as unconstitutional. Applying analogical reasoning, I hold that the Fit Person can only act as a stopgap arrangement. He should attend to the day to day necessities set out in G.O (Ms) No.223 dated 10.06.2011. But policy decisions and those having serious financial implications can only be taken by a duly constituted board of trustees.

16.It was already noted that Executive Officer was appointed for the second respondent temple originally under Madras Act 2 of 1927. Continuing the said arrangement is illegal. The situation is aggravated by making him the ex-officio Fit Person. This state of affairs has continued for a scandalously long period. A worshipper is certainly entitled to bring it to the notice of this Court that the administration and financial affairs of the temple are not being handled in a manner consistent with the provisions of the Act.

17.The respondents of course contended that when the appointment or the continuance in office of the Executive Officer/Fit Person is not directly under challenge in this writ petition, the petitioner cannot be permitted to make it a collateral ground of attack. I reject this contention. The writ petition has not been filed by a person having commercial interest. It has been filed by a devotee. When the interests of temple are involved, this Court cannot adopt a technical approach. Nor will it look the other way. It is the duty of this Court to ensure that the administration of the second respondent temple is carried on in accordance with the provisions of Tamil Nadu Act 22 of 1959 and the Rules framed thereunder. The tender notification has been issued by an official who is standing on this ice. Its tenuous nature has already been set out. In any event, a Fit Person cannot issue a notification of this nature. I, therefore, sustain the stand of the petitioner and quash the impugned tender notification.

18.I cannot stop with that. Certain consequential directions have to be issued. The State Government as well as the controlling authorities will take all possible steps to ensure that the board of trustees is constituted for the second respondent temple as early as possible. Referring to certain disturbing developments in the State of Andhra Pradesh, today's editorial in the New Indian Express says thus :

"...Reconstituting temple trust boards with eminent Hindus and men of impeccable character would be a good start. Leaving the temples in the care of the bureaucracy and politicians hasn't helped..."

These words are equally relevant to the State of Tamil Nadu.

19.With this observation and direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

22.09.2020

Index : Yes / No
Internet : Yes / No
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Note: 1.Issue order copy expeditiously.

2.In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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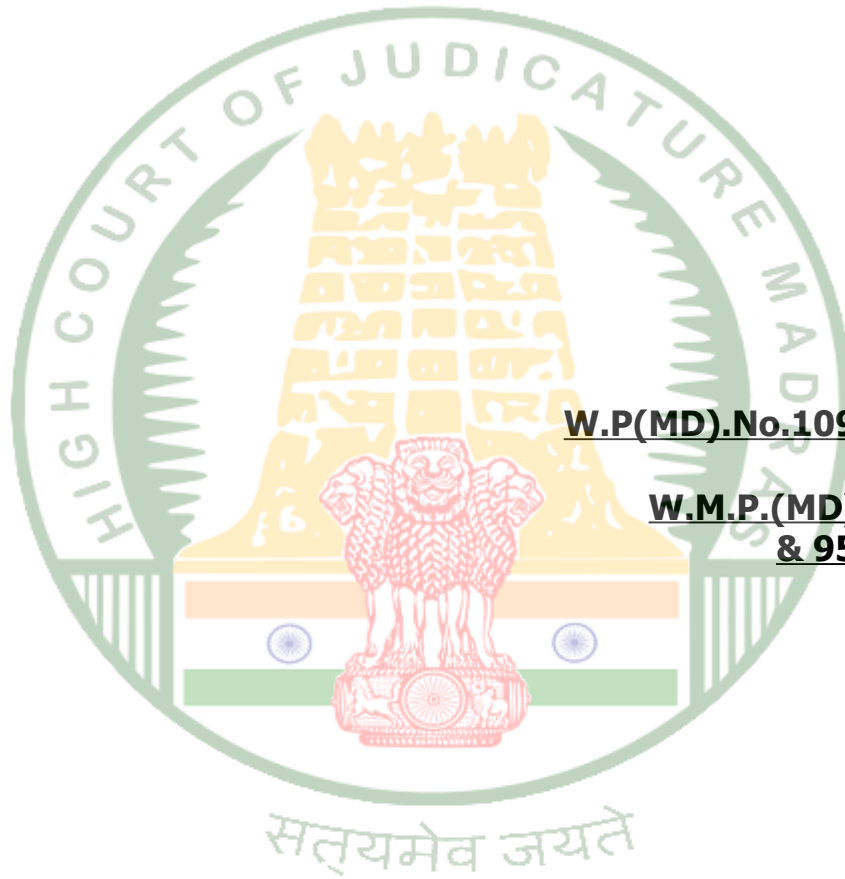


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