



WP(MD)No.23733 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2024
Pronounced on : 03.09.2024.

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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1.Sri Subramaniaswami,
Thirukovil Sudhanthira Paribalana
Sthalatharkal Sabha,
Reg No.12 /96,
represented by the President,
Veerabahu Moorthi

2.R.Hariharasubramanian
Joint Secretary

... Petitioners

VS

1.The Commissioner,
Hindu Religious and
Charitable Endowments Department,
119, Gandhi Salai,
Nungambakkam,
Chennai – 600 0034.

2.The Joint Commissioner /
the Executive Officer,
Arulmigu Subramniya Swamy Temple,
Tiruchendur,
Tuticorin District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records on the file of the 2nd respondent in connection with the order passed by the 2nd respondent in his proceedings in Na.Ka.No.5089/2022U(2), dated 21.09.2023 and quash the same.

For Petitioners	: Mr.R.Singaravelan, Senior Counsel for Mr.D.Selvanayagam
For Respondent No.1	: Mr.P.Subba Raj, Special Govt.Pleader
For Respondent No.2	: Mr.M.Muthu Geethaiyan, Standing Counsel

ORDER

The 1st petitioner a Society along with its Joint Secretary in the individual capacity has filed this writ petition challenging the orders of the 2nd respondent dated 21.09.2023.

2.The 2nd respondent by the order impugned in this writ petition has shifted the place of distribution of vibuthi prasadam to the devotees of the Arulmigu Subramaniaswamy Thirukovil, Tiruchendur from Mayil Thevar Sannadhi at Maha Mandabam to near Kodi Maram in the next



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praharam. By the impugned order the executive officer of the temple has taken certain administrative decision in distribution of vibuthi prasadam offering of coconut etc., The distribution of vibudhi by Tirusundarars was shifted from Mayil Thevar Sannidhi and similar order was also passed for the distribution of vibudhi by the Pattars, Sivachariyars as in front of Nadarajar Sannidhi. Breaking of coconut and archanai arrangements for the devotees coming on paid dharsan at Valli Sannidhi in the first praharam and at Kumara Vidangar Sannidhi. For those visiting the temple in general que the archanai and coconut breaking would be near Dwara Balagar in the 2nd praharam. These changes have been recommended by the Board of Trustees of the temple for the purpose of peaceful and speedy dharsan in the temple and the same was implemented by the 2nd respondent Executive Officer by this impugned order.

3.The petitioners are Tirusundarars and archargars of the tempele. The learned Senior Counsel appearing for the petitioner submits that the distribution of vibhuthi and breaking of coconut in front of the deity inside the Mahamandapam is a religious practice in vogue for several



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years has been changed by this impugned order. Receiving vibudhi prasadam and offering coconut to the deity are religious right of the devotees guaranteed under Article 25 of the Constitution of India and also the right conferred under Sections 105 and 107 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The impugned order not only interferes with the right of the devotees but also interferes with the right of the Thirusundarar, who are serving in the temple. The distribution of vibuthi by the Thirusundarar inside the Mahamandabam behind the Mayil Thevar Sannidhi is permitted by an order in the year 2012 and the same is now disturbed without providing any opportunity to the Thirusundarars. In this regard, the learned Senior Counsel has referred the orders of the Hon'ble Full Bench in *R.S.Kalyanasundaram Vs The Commissioner, HR and CE Department, Chennai* dated 30.08.2022 and submits that the Hon'ble Full Bench has held that the right of the Thiru Sundarar should not be affected without giving them opportunities being heard. The learned Senior Counsel has also relied on Section 105 of the HR&CE Act, 1959 and submits that no customary practice can be upset by the Department. He further submits that the right of the department to regulate the temple is only related to



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secular activities and not the religious activity unless, if any of the religious activities amounts to illegal or inhumane or prohibitory in public interest. In this regard the learned Senior Counsel has relied on the orders of the Hon'ble Supreme Court in the Commissioner, HR and CE Department Vs Sri Lakshmindra Thirtha reported in 1954 SCR 1005 and Sri Venkataramana Devaru Vs State of Mysore in 1958 SCR 895. The learned Senior Counsel has also relied on the orders of the Hon'ble Supreme Court in Seshammal & Others Vs. State of Tamil Nadu reported in 1972 2 SC 11 and submits that the government have no power to interfere with the religious affairs or the rituals and even if interfered with, any person a worshipper or the person interested in the temple can question the same. The relevant paragraph referred by the learned Senior Counsel in Seshammal's case is extracted as under:

“The Archaka has never been regarded as a spiritual head of any institution. He may be, an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The



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Dharam-karta or the Shebair makes the appointment and the Archaka is a servant of the temple. It has been held in [K., Seshadri Aiyangar v, Ranga Bhattar](#)(1) that even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the unamended section 56 of the Principal Act which provides "all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be. controlled by the trustee, and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause." That being the position of an Archaka, the act of his appointment by the trustee is essentially secular."

4.The learned Senior Counsel has also referred to the judgment of the Hon'ble Supreme Court in *Adi Saiva Sivachariyargal Nala Sangam &*



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others Vs.Govt of Tamil Nadu and another reported in 2016 2 SCC 725 and the orders of the Hon'ble Supreme Court in Kantaru Rajeevaru V Indina Yong Lawyers Association reported in 2022 SCC OnLine Mad 4154 and submits that the trustees have to administrate the temple in accordance with the usage of the institution. Therefore, according to the learned Senior Counsel the distribution of vibuthi prasadam and breaking of coconut inside the Mahamandapam is in usage of temple for several years and that cannot be disturbed in the name of the administration and this amounts to affecting the fundamental rights of the devotees, which is in existence from time immemorial.

5.The learned Counsel for the 2nd respondent has raised preliminary objections with regard to the maintainability of this writ petition on the ground that the writ petition has been filed by the association. The petitioner's society has not produced any documents that the society is in existence as on date. The 2nd petitioner Hariharasubramanian, who filed this writ petition in the individual capacity is a suspended Archaga and he was suspended by order dated 27.07.2023. Though the 2nd petitioner has obtained an interim order in



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WP(MD)No.19620 of 2023, dated 11.08.2023, the same was stayed by the Division Bench of this Court in WA(MD)No.1504 of 2023 and therefore, he cannot maintain this writ petition.

6.He further submits that the Thirusudandhirar are not Archagars, they are idainaali, which means, they cannot enter into the garpha graha of the main deity and Lord Shanmuga and also other deities for the purpose of doing archanai services to the respective deities. They are only doing services like preparing Sathakattai, kittyam, Sripadam, Athiyanam, Vedhaparayaman and other related services. Therefore, according to him the services of Thirusudhandhirar are nothing but an assistance in the performance of pooja of an employee. For doing these services they are provided with share in their respective services as remuneration from the 2nd respondent temple by way of cash and for certain services as paditharam. Since they are receiving cash as remuneration, they are employees of the temple and therefore, they cannot question the impugned proceedings.



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7. With regard to the earlier proceedings, conferment of certain right on the petitioners / Thirusudandhirar for distributing vibuthi prasadam behind the Mayil Thevar Sannidhi in Na.Ka.No.7159/2012/U2, dated 02.08.2012, the learned Counsel for the 2nd respondent submits that was the decision taken by the then Thakkar, who belongs to the Thirusundarar community in favour of their Society. The present trustees have taken this decision considering the situation prevailing and therefore, according to him when the earlier trustee can take decision in the year 2012 for distributing vibuthi prasadam behind Mayil Thevar Sannidhi, the present trustee is also having right to cancel, modify the same. The earlier proceedings dated 02.08.2012 was issued with certain conditions and the same has been now revised after 11 years, considering more number of devotees visiting the temple. The said decision was taken by the board of trustees for the convenience of the devotees visiting the temple and it cannot be stated as violation of the religious practice and the fundamental rights.

8. He further submits that this decision was taken by the board of trustees on the complaints received from devotees that the archagars are



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demanding money. He further submits that the Mahamandabam where the main deity is situated in the Sanctum Sanctorium is a very small place and everyday several thousands of devotees are visiting the temple, breaking coconut near the main deity is causing delay in movement of the que and on account of that the devotees coming in general que are affected.

9.This Court considered the rival submissions made and perused the materials placed on record.

10.The order impugned is a decision taken by the Board of trutees in the administration of the temple and the same was implemented by the 2nd respondent. In course of administration they can take such decision in the interest of the devotees. However certain religious and customary practice cannot be changed for the convenience of the administration. The distribution of vibuthi prasadam in front the deity with the deepa aradhana is a religious and customary practice not only in the 2nd respondent temple, but also in all other temples in this State. Any change in the distribution of vibhuthi prasadam inside the sanctum sanctorum



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would certainly affect the devotees, who are visiting the temple.

As stated in Sehammal's case cited supra, if any rule is framed by the Government for the purpose of interfering with the rituals and ceremonies of the temple, the same is liable to be challenged by those who are interested in the temple worship and therefore, every person interested in the temple is entitled to challenge the proceedings. In this case, this writ petition has been filed not only by the Society but also by, an Archagar of the Temple in the individual capacity and therefore, this Court rejects the preliminary objection raised by the second respondent.

11. At the same time, the Agama and other rituals in the temples are often changed to the convenience of the administration and archagas. Even in this temple several changes have been made in the past by opening the temple on special occasions @ 1.00am, not closing the temple in the afternoon, etc., These changes have not been challenged by Archagas of the temple, even though they are against Agamas.



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12.It is true the number of devotees visiting the temple is increased in manifold in the past. The people who are visiting the temple in general dharshan are waiting for hours together to have dharsan of the deity and they do not have adequate facilities in their que. They also need to be addressed by the administration of the temple. The temple administration is taking a stand that breaking of coconut at mahamandapam is causing certain delay in moving the que, which cannot be ignored. In Thiruchendur temple, Lord Muruga is in five forms, as Moolavar Shanmugar and Jeyanthi Nathar within Mahamandabam, and as Kumaraa Vidangar in the first praharam and as Alaivaai Ugantha Muruga Peruman and therefore, there offerings of coconut can be shifted to Kumara Vidangar or Mayura Nathar. The temple administration shall also work out the possibility of shifting the Jayanthi Nathar from Mahamandabam to any of the outer mandabams and the coconut offerings can be shifted to this place.

13.The order has been passed considering the movement of the devotees in the que. The distribution of vibuthi may not cause much delay and it is also unavoidable customary practice for the devotees to



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have their vibudhi prasadam in front of the deity along with Deepaaradhanai. At the same time the petitioners and the administration shall workout the possibility of shifting the place of breaking of coconut at Kumara Vidangar or at Mayura Nathar in consultation with other stakeholders.

14. Accordingly the impugned order is set aside with a direction to the 2nd respondent to take a decision in consultation with stakeholders including the petitioner's saba and also considering the convenience as well the sentiments of the devotees who are visiting the temple. Accordingly this writ petition is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

03.09.2024

DSK



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To

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Charitable Endowments Department,
119, Gandhi Salai,
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the Executive Officer,
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