

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 18980 of 2007 (H)

PETITIONER:

**GURUVAYUR DEVASWOM MANAGING COMMITTEE,
GURUVAYUR, REPRESENTED BY ITS ADMINISTRATOR.**

**BY ADVS.SRI.U.K.RAMAKRISHNAN (SR.)
SMT.P.VIJAYAMMA
SRI.V.KRISHNA MENON**

RESPONDENT(S):

- 1. THE ASSISTANT LABOUR OFFICER, INSPECTOR,
KERALA SHOPS & COMMERCIAL ESTABLISHMENTS ACT,1960.
CHAVAKKAD.**
- 2. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, TRIVANDRUM.**

R BY GOVERNMENT PLEADER, SRI. R. RENJITH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 18980 of 2007 (H)

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1 - COPY OF THE INSPECTION REPORT DATED 12.02.2007 SENT BY THE FIRST RESPONDENT.
- EXHIBIT P2 - COPY OF THE REPLY DATED 12.02.2007 SENT BY THE PETITIONER TO THE FIRST RESPONDENT.
- EXHIBIT P3 - COPY OF THE LETTER OF THE FIRST RESPONDENT DATED 21.03.2007.
- EXHIBIT P4 - COPY OF THE NOTICE DATED 09.05.2007 ISSUED BY THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. VINOD CHANDRAN, J.

W.P.(C) No.18980 of 2007

Dated this the 30th day of January, 2015

JUDGMENT

The petitioner is aggrieved with the proceedings initiated by the 1st respondent, under the Kerala Shops and Commercial Establishments Act, 1960 (hereinafter referred to as 'the Act'). The notice – Ext.P4, seeks coverage of the Book-Stall, run by the Guruvayur Devaswom, within the premises of the Devaswom Board, just outside the temple premises, under the Act. Notice has been issued on the presumption that there is a trade or business carried on within the said Book-Stall and hence, the same would come under the definition of 'shop' under Section 2 (15) of the Act. The State has also filed a counter affidavit supporting the stand of the Assistant Labour Officer and seeking to sustain the proceedings on the very same grounds.

2. The learned Standing Counsel of the petitioner however would seek to dispell such presumption on the premise that the Book-Stall is conducted by the Guruvayur Devaswom Board, engaging its employees, who are not exclusively engaged in the

Book-Stall. The Guruvayur Devaswom itself, is a creature of the Guruvayur Devaswom Act, 1978, which specifically confers power to frame regulations determining the conditions of service of the employees of the Devaswom by Section 39. The Guruvayur Devaswom Employees Regulations, 1983, have also been framed under the said enactment, wherein the Kerala Service Rules and the Kerala Civil Service (Classification, Control and Appeal) Rules are adopted to regulate the service of the employees. In such circumstance, the petitioner claims exemption in so far as being covered under an enactment. The Book-Stall does not have regular employees and they are appointed on transfer of employees of the Devaswom and the Book-Stall remains open only when the temple is open; which would make the working hours as stipulated in the Act impossible of compliance in the Book-Stall.

3. Section 3 of the Act speaks of exemptions and specifically by sub-clause (f) of Sub-Section (1) exempts establishments, not covered under the Factories Act, from the application of the Act of 1960, if such establishment is governed by a separate law for the time being in force in the State of Kerala. The Guruvayur Devaswom Act, 1978 has been enacted

in public interest and in the interest of the worshippers of the temple, for proper administration of the Devaswom, in accordance with law and as laid down in the various judgments of the High Court of Kerala as also the High Court of Madras as noticed in the preamble of the said Act.

4. Section 39 of the said Act specifically confers powers on the Committee, to make regulations subject to the approval of the Government, to regulate the conditions of service of the Administrator, other officers and employees of the Devaswom. The Guruvayur Devaswom Employees Regulations, 1983, framed under such powers, list out the employees, the method of appointment and the terms of engagement. Regulation 6 adopts the Kerala Service Rules Part I, II and III and makes its applicable to all employees of the Guruvayur Devaswom Service, except certain traditional positions to whom the provisions in the Kerala Service Rules Part - I alone are made applicable. Regulation 23 speaks of the adoption of the Kerala Civil Service (Classification, Control and Appeal) Rules, 1960 and Regulation 25 adopts the Kerala Government Servant's Conduct Rules, 1960 to the employees of the Guruvayur Devaswom Service including those persons who are working in temporary posts.

In such circumstance, the Book-Stall of the petitioner is governed by a separate statute and regulations framed thereunder. The terms of employment of its employees are regulated by Regulations applicable to such employees, framed under a different enactment. The coverage of the Act cannot be made applicable to the Book-Stall especially on account of the exemption in Section 3(1)(f) of the Act.

The Writ Petition is allowed, interdicting coverage of the Book-Stall of the petitioner under the Kerala Shops and Commercial Establishments Act, 1960.

JV

sd/-
K. VINOD CHANDRAN,
JUDGE