IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2017

CORAM

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
And
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.2290 of 2017
And
W.M.P.Nos.2270 and 2271 of 2017

M/s.Temple Worshippers Society
Rep. by its President
T.R.Ramesh ... Petitioner

Vs.

Government of Tamil Nadu
By its Principal Secretary to Government
Tourism, Culture and Religious Endowments Department
Fort St.George, Chennai 600 009. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring the Impugned Rules of the respondent, styled as "The Conditions for Appointment of Executive Officers Rules, 2015" framed by the respondent vide G.O.Ms.No.260 Tourism, Culture and Religious Endowments Department (RE4-2) dated the 6th November, 2015 as ultra vires of Sections 43-A, 45 and 107 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act XXII of 1959) and Articles 25, 26 and 31-A (1)(b) of the Constitution of India and consequently quash the same.

For Petitioner : M/s.Rathina Asohan
For Respondents: Mr.M.Maharaja
Special Government Pleader (HR & CE)

ORDER
(Delivered by M.SUNDAR,J.)

1.This is a Public Interest Litigation ('PIL' for brevity). Petitioner is a society registered under the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as 'petitioner society' for convenience).

2.This PIL has been filed by the petitioner society assailing the vires of some provisions of a subordinate legislation, which is in the form of a set of Rules which go by the name “Conditions for Appointment of Executive Officer Rules, 2015” (hereinafter referred to as 'impugned rules' for the sake of brevity, convenience and clarity).

3.The impugned Rules have been made by the Government of Tamil Nadu in exercise of Rule making powers vested in it by Section 116(2)(i) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [Tamil Nadu Act 22 of 1959] (hereinafter referred to as 'said parent Act' for the sake of brevity, convenience and clarity).

4.It is deemed necessary to set out the brief set of facts that may be necessary for appreciating this order.

5.BRIEF FACTS:

(i)The said parent Act was enacted in 1959 with the object of providing a self contained statute relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu. The said parent Act was enacted with the intention of amending and consolidating the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu. We are informed that about thirty six thousands Temples are administered by the Tamil Nadu Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu, (hereinafter referred as 'TNHR & CE Department' for brevity) by applying the said parent Act.

(ii)On 17.08.2015, petitioner society filed five writ petitions (all PILs) challenging appointment of Executive Officers by the Commissioner, TNHR & CE Department to five Hindu Temples inter alia on the ground of absence of mandatory Rules under Section 45(1) of the said parent Act.

(iii)In the above said five PILs, TNHR & CE Department filed a counter affidavit bringing to the notice of the Court that the impugned Rules have been framed and published in the Gazette on 06.11.2015. Recording the same, this Court disposed off all the five PILs, holding that the same have become infructuous albeit giving liberty to the petitioner society to take recourse to legal remedy if so advised in view of the notification of the impugned Rules.

(iv)In the above back drop, contending that the instant PIL is pursuant to/ in continuation of the above said order of this Court, petitioner society has now laid challenge to the vires of the impugned Rules.

6.DISCUSSION:

(i)Petitioner society, in its endeavour to assail the impugned Rules in the instant PIL, has not disputed the Rule making power. Petitioner society would say that the Rule making power has been so exercised wherein and whereby some provisions of the impugned Rules violate and are therefore ultra vires sections 43-A, 45 and 107 of the parent Act.

(ii)Whenever a challenge is laid to subordinate legislation, duty is cast on the petitioner making such challenge to satisfy certain parameters. The parameters which the petitioner has to satisfy in all challenge to subordinate legislation came up for consideration in P.Krishnamurthy's case (2006) 4 Supreme Court Cases 517. In this judgment, the Supreme Court held that the burden is upon the person who attacks to show that the subordinate legislation is invalid. The Supreme Court also held that presumption is always in favour of constitutionality and / or validity in such cases. Saying so, seven parameters were laid down and the same are as follows:

> "(a)Lack of legislative competence to make the subordinate legislation.
> (b)Violation of fundamental rights guaranteed under the Constitution of India.
> (c)Violation of any provision of the Constitution of India.
> (d)Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
> (e)Repugnancy to the laws of the land, that is, any enactment.
> (f)Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)."

As stated supra, in the instant case, the sheet anchor of the petitioner's challenge to some of the provisions of the subordinate legislation is that it is ultra vires three specific provisions of the said parent Act. Therefore, the instant case would specifically fall under (d) supra, in terms of parameters laid down in P.Krishnamurthy's case.

(iii)Before proceeding further, it will be trite to say that the nature of the grounds that can be taken in a challenge to a legislation and also the broad contours within which the petitioner assailing a legislation should perambulate were laid down by a Division Bench of this Court to which one of us (CJ Justice SANJAY KISHAN KAUL) was a party. The abovesaid judgment is reported in 2015 - 2 - L.W.97 (Anti Corruption Movement Vs. The Chief Secretary to Government of Tamil Nadu and others). The pithy paragraph that could be relevant here is paragraph 25 and the same reads as follows:

> "25.The thrust of the argument of the learned senior counsel was that the other party should not take the Court into arenas which are not germane for determining the Constitutional validity of a statutory provision, there being only two grounds available for such challenge. These two grounds are:
> 1)Legislative competence, and
> 2)Violation of Fundamental Rights guaranteed under Part-III of the Constitution of India."

(iv)In the hearing, in the course of submissions in the Court, learned counsel for petitioner would say that his challenge is to some of the sub-rules in Rules 3 and 4. Learned counsel would also submit that his challenge is also to Rules 5 to 8 and 10 in its entirety. For this purpose, it may be necessary to extract the Rules that are being canvassed as being ultra vires the said parent Act. The said Rules are as follows:

> "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,-
>
> ....
>
> (viii)that if the trustee opts for the appointment of an executive officer to assist him in the better administration and development of the religious institution; or
>
> (ix)that any scheme settled or deemed to have been settled to any religious institution under the provisions of the Act contains a clause as such; or
>
> (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.
>
> 4.The Executive Officer so appointed under rule 3 shall perform his duties, subject to the following conditions, namely:-

(a)He shall function along with the trustee;

(b)He shall, subject to such restrictions as may be imposed by the Commissioner and the Government,

....

(iii)sue or be sued in the name of the religious institution in all legal proceedings with the approval of the competent authority:

Provided that any legal proceedings pending immediately before the commencement of these rules by or against the religious institution shall not be affected.

....

(d)He shall ensure that the funds or properties of the religious institutions are properly utilised for poojas, rituals, festivals and other services and are performed according to usage and dhittam of the religious institution.

5.The Executive Officer shall be responsible for the proper administration of the religious institution, to have effective control over the staff and properties of the religious institution for the proper working of the system in accordance with law.

6.All the staff and servants shall work under the immediate control and superintendence of the Executive Officer, subject to the disciplinary control of the trustee under section 56 of the Act.

7.Notwithstanding anything contained in rule 3, the Commissioner may permit the Executive Officer to continue to discharge his administrative functions in accordance with the provisions of the Act,

(i)till the circumstances warranting the appointment of an Executive Officer subsist as pointed out in rule 3, except clauses (viii) and (ix) of the said rule 3 stand remedied; or

(ii)till such time as the circumstances of the religious institution warrants; or

(iii)to assist the trustee, with his consent, for the purpose of ensuring better and efficient administration and management and the interest of the religious institution warrants for such continuation of the service of the Executive Officer.

8.The Executive Officer shall exercise such powers and discharge such duties assigned to him by the Commissioner from time to time under sub-section (3) of section 45 of the Act, and also such powers and duties are conferred under the various provisions of the Act and the Rules made thereunder.

....

10.(1)Nothing contained in these rules shall adversely affect the powers of the Executive Officer, who has been holding the post immediately before the date of the commencement of these rules.

(2)The powers of the Commissioner under these rules shall be in addition to, and without prejudice, to the rights and powers of the Commissioner under section 74 of the Act."

(v)Rule 3 deals with the considerations on the basis of which the Commissioner can appoint an Executive Officer. With regard to sub-rule (viii) therein, the Trustee opting for appointment of an Executive Officer is one of the considerations and the same cannot be termed ultra vires the said parent Act because the said parent Act vide Section 45 and other provisions envisages the Executive Officer and the Trustee working in tandem in the administration of the Temple.

(vi)With regard to the sub-rule (ix) of Rule 3, appointment of an Executive Officer can be on the basis of any Scheme settled for a religious institution, particularly, when such Scheme contains a clause providing for Executive Officer is certainly not ultra vires the said parent Act, as Section 64 of the said parent Act provides for framing of such Schemes. Besides this any Scheme that may be framed by the Courts have to necessarily be implemented and therefore, the grievance of the petitioner in this regard is mis-placed.

(vii)With regard to sub-rule (x) of Rule 3, it is a residuary sub-rule which is for any other reason, Law is too very well settled that any residuary Rule can be exercised and applied only within the four corners of the Rules as well as the said parent Act. Therefore, the provision of a residuary Rule by itself cannot be found fault with.

(viii)Rule 4 deals with the duties of the Executive Officer appointed under the Rules and the conditions subject to which such Executive Officer shall function. Challenge to 4 (a) does not stand a moment's scrutiny because the Scheme of the Act itself provides for the Executive Officer and the Trustee working in tandem in administration of the Temple as set out supra.

(ix)With regard to challenge to sub-clause (iii) of sub-rule (b) of Rule 4, the petitioner's grievance that the Executive Officer should not be given authority to sue or be sued in the name of the religious institutions in all legal proceedings is, in our opinion, bordering on being preposterous. The reasons are two fold: one is, there is an inherent safeguard in sub-rule (iii) itself as it says that the Executive Officer, shall so sue or be sued only with the approval of the competent authority. The other reason is that when we talk about religious institution suing or being sued, it is in effect the idol. Law is well settled that the idol is a minor and therefore, somebody should sue and be sued on behalf of the minor. Infact, the Courts have gone as far as saying that courts are parenti locus qua idol. To draw an anology, it may be relevant to point out that a company (irrespective of whether it is a public company or private limited company) is a juristic person and therefore, a natural person would represent the company in all proceedings. The religious institution being made a party to or becoming a party to any legal proceedings is akin to the situation.

(x)With regard to sub rule (d) of Rule 4, we are unable to see any infirmity in the same qua the said parent Act. The parent Act by its very Scheme envisages the functions of a religious institution/ Temple being performed by a natural person. As stated supra, it is the case of the petitioner that the impugned Rules offend Sections 43-A, 45 and 107 of the said parent Act. We see no prohibition or bar in any of these provisions, for a natural person like the Executive Officer within the meaning of Section 45 administering the funds and properties of the religious institution and ensuring that the same are utilized for poojas, rituals and festivals, in accordance with the usage of the religious institutions concerned.

(xi)Rules 5 and 6, go together. A mere reading of Rules 5 and 6 would show that they are intended only to ensure that the staff and servants of a religious institution are brought under some structured work environment. The Rules intend to only give Executive Officer control in such structured environment. We fail to see any shred substance in the submission that such Rules are ultra vires the above said provisions of the said parent Act.

(xii)With regard to Rule 7, it is again intended to permit the Executive Officer to continue the discharge of its administrative functions in accordance with the provisions of the said parent Act. On the face of it, we fail to appreciate much less agree with the submission that such a provision is ultra vires Sections 43 A, 45 and 107 of the said parent Act as it militates against the plea of this very petitioner in the earlier five writ petitions that Rules have to be framed.

(xiii)With regard to Rule 8, we find the attack to the said Rule as one begging the question. Rule 8 by itself is clarificatory and explanatory in nature, wherein and whereby, it says that the Executive Officer shall exercise such powers and discharge such duties assigned to him by the Commissioner and that such powers and duties shall be thus conferred under various provisions of the said parent Act and the Rules made thereunder. Rule 8, is more in the nature of a safeguard, which ensures that the powers and duties of an Executive Officer are within the four corners of the said parent Act and the Rules thereunder. In our considered opinion, we have no hesitation in holding that Rule 8 in not only not ultra vires the said parent Act but is also one that remedies and dispels the apprehension which the petitioner society is expressing. We say so because the sheet anchor of this petition is that the petitioner society is apprehensive that the impugned Rules would provide for appointment of Executive Officer for religious institution / Temple, which would act beyond the scope of the said parent Act. In other words, the very basis on which the petitioner society has laid the challenge to the impugned Rules is on the apprehension that the impugned Rules would permit a Executive Officer to be appointed under the impugned Rules to perambulate beyond the four corners of the said parent Act and the Rules therein.

(xiv)With regard to the challenge to Rule 10, we notice that Rule 10 provides for Executive Officers who are holding office on the date of coming into force of the impugned Rules, to continue to so function. It also lays down that the powers of the Commissioner under the impugned Rules shall be in addition to Section 74 of the said parent Act. Section 74 states that the Commissioner shall as soon as may be appoint a Executive Officer for every religious institution and that a person so appointed shall be one professing Hindu Religion. 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 suplying 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.

(xv)Besides the above, the petitioner society would make a grievance about the title of the impugned Rules. The petitioner society would contend that the tile should read as conditions "of" appointment of Executive Officers Rules and that the instant caption conditions "for" appointment of Executive Officers Rules, is a glaring mischief. We are unable to agree. We are unable to persuade ourselves to even accept this as a ground of challenge. The reason is that, the law is too very well settled that title to any statute or set of Rules like/ similar to margin notes and captions for provisions of law by themselves do not determine the language/ meaning of the statute or the Rules. The title, similar to margin notes and captions to various provisions are merely for ease of reference. They do not determine the language of the Rules of the statute and in the normal course, they cannot even be used as an aid for interpretation. Principles of interpretation of Statutes is well settled in this regard.

(xvi)We notice from the pleadings that the petitioner society has also stated in the affidavit filed in support of the writ petition that the impugned Rules are violative of Articles 25, 26 and 31 A (1) (b) of the Constitution of India ('COI' for brevity), but no such submission was made in the course of the hearing. In other words, though pleaded, the same was not argued. We had put a specific query to the learned counsel for the petitioner in this regard and the learned counsel for the petitioner made it clear that his challenge to the impugned Rules is restricted to saying that the impugned Rules offend Sections 43-A, 45 and 107 of the said parent Act. Therefore, we take it that the pleading regarding the impugned Rules being violative of certain provisions of COI are waived by the petitioner society.

(xvii)The petitioner society, in the pleadings has also referred to certain reported judgments, but the same were not pressed into service in the hearing. Therefore, we find no reason to go into constitutional validity of the impugned Rules.

(xviii)In any event, in the light of the conclusion that we intend to arrive at with regard to the challenge to the impugned Rules qua the said parent Act, which would be set out infra, makes it unnecessary even to test constitutional validity of the impugned Rules. In other words as we have rejected all the ground of challenge of the petitioner society, to the validity of the impugned Rules qua the said parent Act and therefore the question of testing the constitutional validity of impugned

Rules which are in the nature of subordinate legislation does not arise.

(xix)Before we part with the case, we deem it fit to notice that the petitioner society had earlier moved this Court assailing the appointment of Executive Officers to five Temples and the details are as follows:

"(i)Sri Arthanareeswarar Temple,Tiruchengode
(W.P.No.25429/2015)
(ii)Sri Nellaiappar Temple, Tirunelveli
(W.P.No.25430/2015)
(iii)Sri Kallazhagar Temple, Azhagarkoil
(W.P.No.25431/2015)
(iv)Sri Parthasarati Temple, Tiruvallikeni
(W.P.No.25432/2015)
(v)Sri Kandhaswamy Temple, Tirupporur
(W.P.No.25433/2015)"

One of the grounds of challenge in the above said five writ petitions was that Rules have to be necessarily prescribed for appointment of Executive Officers. Now that the Rules have been prescribed, the petitioner society has come up with a challenge to the Rules which in our considered opinion is sweeping in nature. In other words, the petitioner society in one breadth would say that Rules have to be framed for appointment of Executive Officers and in another breadth would make a complete and sweeping challenge when the rules when made. We say so, as the petitioner society has challenged seven Rules in the impugned Rules while the impugned Rules as a set of Rules itself contains only ten Rules in all. To put it otherwise, in a set of Rules containing ten Rules, the petitioner society has challenged seven Rules. If we exclude Rules 1 and 2 which deal with title and definitions, petitioner society has virtually challenged the entire set of Rules.

7.CONCLUSIONS:

(i)Owing to all that have been stated supra, particularly under the caption DISCUSSION, we have no hesitation whatsoever in concluding that the impugned Rules namely, 'Conditions for Appointment of Executive Officers Rules, 2015' made by the Government in exercise of powers conferred on the Government vide Section 116 (2) (1) (Rule making power) of the said parent Act namely, Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) is valid and not ultra vires Sections 43-A, 45 and 107 of the parent Act.

8.DECISION:

(i)In the light of the discussions and conclusions above, we dismiss the writ petition. As we have not ordered notice (though the State Counsel was present in the hearing) and as we are dismissing the writ petition at the admission stage itself, we are not examining the aspect of costs, considering the nature of the matter. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

Secretary to Government,
Government of Tamil Nadu,
Tourism, Culture and Religious Endowments Department
Fort St.George, Chennai 600 009.

CP(CO)
RS(16/02/2017)

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