



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 06.04.2017
DELIVERED ON : 28.04.2017

CORAM

THE HONOURABLE MR. JUSTICE V. PARTHIBAN

W.P (MD) No.21041 of 2016
and W.M.P. (MD) Nos.15038 to 15040 of 2016

A.S.A.Sampath

..Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowments (Administration)
Department,
Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner,
HR & CE Department,
Sivaganga.

3.The Assistant Commissioner,
HR & CE Department,
Paramakudi.

4.The Administrative Trustee,
A/m.Kailasanathaswamy Matrum Nithyakalyani Thirukoil,
Ilayathakudi, Tirapattur Taluk,
Sivaganga District.

4.The Inspector,
Hindu Religious Charitable Endowment Department,
Tirapattur I,
Sivaganga District.

6.Rama Vinaitheerthan

7.Muthu Palaniappan

8.K.Raja Swaminathan

..Respondents

R8 impleaded vide Court order dated
06.01.2017 in WMP(MD) No.16246/2016

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, call for the records of the 1st Respondent herein in Se.Mu.Na.Ka.No.4885/2016/A2 dated 20.10.2016 and to quash the same in so far as it relates to appointment of the respondents 6 to 8 as Non-hereditary Trustee in Arulmigu Kailasanathaswamy Matrum Nithyakalyani Thirukoil at Elayathakudi and to direct the 1st Respondent to appoint the petitioner as non-hereditary trustee in the same temple.



WEB COPY

For Petitioner

:Mr.AR.L.Sunderesan
Senior Counsel for
Mr.R.M.Arun Swaminathan

For Respondents 1 to 3, & 5 :Mr.VR.Shanmuganathan

Special Government Pleader

For 4th Respondent

:Mr.K.N.Govarthanan

For 6th Respondent

:Mr.M.Ajmalkhan
Senior Counsel for
Mr.M.Sureshkumar

For 7th Respondent

:Mr.T.Mohan
for Mr.M.Sureshkumar

For 8th Respondent

:Mr.K.Prabhakar

ORDER

The petitioner has approached this Court seeking quashment of the proceedings of the 1st Respondent herein in Se.Mu.Na.Ka.No.4885/2016/A2 dated 20.10.2016 in so far as it relates to appointment of the respondents 6 to 8 as Non-hereditary Trustee in Arulmigu Kailasanathaswamy Matrum Nithyakalyani Thirukoil at Elayathakudi and to direct the 1st Respondent to appoint the petitioner as non-hereditary trustee in the same temple.

2.The case of the petitioner is that Arulmighu Kailasanathaswamy Matrum Nithyakalyani Thirukoil, Ilayathangudi is under administration in accordance with the scheme originally settled in Appeal No.72 of 1923 and C.R.P.No.258 of 1923 before this Court vide order dated 01.12.1926. The temple is governed by the Scheme as per the Hindu Religious and Charitable Endorsements Act, 1959 (hereinafter referred to as HR & CE Act) and under Section 46(2) of the HR & CE Act it is declared as a Scheme Temple. In terms of the said scheme "Nagarathar" means the adult male members of the sub-division of Nattukottai Chetty Community known as "Ilayathakudi Nagarathars" consisting of the following Vaguppus or Groups: (a) Okkoorudayar Pirivu (b) Pattinasamyar (c) Kalanivasalkudiyar (d) Perumaruthoorudayar (e) Kinkinikurudayar (f) Sirusethurudayar and (g) Perusenthurudayar. The temple is administered by the Trustees, namely, hereditary trustees and non-hereditary trustees. The trustees are appointed from among the Karaikarar family i.e., hereditary trustee, every one of the agnatic groups comprising the lineal male descendants of the four following persons, namely, (i) R.M.Palaniappa Chetty of O.Siruvayal (ii) V.Sathappa Chetty of Kanadukathan (iii) S.Visuvanathan Chetty of Karaikudi and (iv) T.Ramanathan Chetty of Devakottai and other non-Karaikarars (non-hereditary trustees) are appointed by the 1st respondent as per Section 47(1)(a)(ii) of the



Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, subject to the condition that the appointment of the three non-hereditary trustees (non-Karaikarar) shall be from anyone of the above said Vaguppu or Pirivu of the Nagarathar community.

3. As per the modified scheme, the appointment of non-hereditary trustees were governed by certain conditions of disqualifications and one of the conditions for disqualification, which is relevant for the present case is where a person shall not be under the age of 25 years or over the age of 65 years of age. This apart, the other conditions of disqualification are enumerated in clause IV of the scheme dated 01.12.1926. As per Clause VI of the scheme, every non-hereditary trustee, who is appointed shall hold office for a period of 5 years on the expiry of which he shall cease to hold the same; but he shall be eligible for renomination. While so, in 2016, vacancies for the office of the non-hereditary trustee had arisen and for consideration of the appointment as non-hereditary trustee, the petitioner submitted an application on 12.08.2016. Necessary documents for such consideration had also been enclosed along the application. Totally 7 persons including the petitioner were considered and out of the seven persons only three were to be selected as non-hereditary trustee as per the Scheme. On consideration of the relative merits of the candidates for appointment for the three vacancies of the office of the non-hereditary trustees, the first respondent eventually selected the respondents 6 to 8 herein and appointed them as non-hereditary trustees vide proceedings dated 20.10.2016. The said proceedings of the first respondent appointing respondents 6 to 8 herein as non-hereditary trustees is under challenge in this Writ Petition.

4. It is relevant to mention here that originally the petitioner had challenged the appointments of respondents 6 and 7 alone, but subsequently, respondent No.8 had been included in the challenge.

5. In the grounds raised in the affidavit filed in support of the writ petition as it originally stood that the appointment of private respondents herein is contrary to the Scheme approved by this Court in Appeal No.72 of 1923 and C.R.P.No.258 of 1923 as respondents 6 and 7 were aged 72 and 67 years respectively and hence they are not eligible for appointment as hereditary trustees of the temple. It has to be mentioned hereunder that as per the Scheme persons above the age of 65 years of age is disqualified for appointment of non-hereditary trustees. It was further stated in the grounds that there was no proper application of mind on the part of the first respondent and the impugned order was mechanically passed without following any procedure or without ~~adhering to the~~ ^{adhering to the} yardstick as to how private respondents had been preferred from the candidates of the trustees and on what basis they were selected.



6. Pending disposal of the writ petition, W.M.P.(MD) No.4718 of 2017 was filed on behalf of the petitioner, seeking to raise additional grounds and the said petition was allowed vide order dated 06.04.2017. According to the additional grounds, no reasons were spelt out in the impugned order passed by the first respondent as to why respondents 6 to 8 alone were selected from the qualified candidates. It is also further stated in the additional grounds that the first respondent has not adopted any fair or reasonable yardstick in selecting the respondents 6 to 8 alone, who do not suffer disqualification as per the provisions of the Tamil Nadu Hindu Religious and Charitable Endorsements Act, 1959 and the scheme applicable to the temple. According to the petitioner in the additional grounds, the scheme originally framed continuous to be in force and the applications were invited as per the scheme, which cannot result in appointment of private respondents particularly respondent No.7 against the specific provision of the Scheme i.e., upper age limit prescribed in Clause IV (b) of the Scheme.

7. Upon notice, Mr.V.R.Shanmuganathan, the learned Special Government Pleader entered appearance for respondents 1 to 3 and 5, Mr.K.N.Govardhanan entered appearance for fourth respondent and Mr.M.Suresh Kumar entered appearance for respondents 6 and 7 and Mr.K.Prabhakar entered appearance for 8th respondent. Detailed counter affidavits have been filed on behalf of the official respondents as well as on behalf of the respondents 6 to 8 herein.

8. The contents of the counter affidavits would demonstrate that the appointment of respondents 6 to 8 herein are perfectly in order and in terms of the HR & CE Act and the selection of the said respondents was a result of proper evaluation of the relative merits of each of the candidates and after seeking report from the respondents 2 and 3 before passing the final order of appointment by the first respondent vide impugned proceedings dated 20.10.2016.

9. Shri.AR.L.Sundaresan, the learned Senior Counsel appearing for the petitioner at the outset would submit that the appointment of the non-hereditary trustees is governed by the provisions of the Scheme and the 7th respondent who is 67 years old cannot be appointed as upper age limit as per Clause IV (b) of the scheme was 65 years. Therefore, the appointment of the 7th respondent which is contrary to the scheme has to be interfered. He would further submit that no reasons were given by the first respondent as to why respondents 6 to 8 were preferred as against the candidature of the petitioner and in the absence of reasons the appointment of respondents 6 to 8 suffers from vice of arbitrariness and therefore, the same is liable to be interfered with.



10. According to Shri. AR. L. Sundaresan, the learned Senior Counsel, though no upper age limit has been fixed in HR & CE Act there ought to have been harmonious construction of the scheme particularly in view of the fact that relevant clause in the scheme is not repugnant to any other provisions of the HR & CE Act. He would further emphasize that the petitioner who satisfied the provisions of the Scheme and who did not suffer any disqualification from application of the provisions of the HR & CE Act ought to have been preferred at least as against the 7th respondent, who according to the learned Senior Counsel suffered disqualification as he crossed the upper age limit under Clause IV (b) of the scheme.

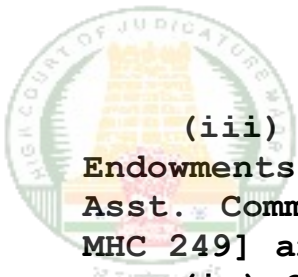
11. The learned Senior Counsel appearing for the petitioner would further submit that according to sub-clause (ii) of Section 118 (b) of the HR & CE Act, the powers conferred on the authorities shall be exercised according to the provisions of the HR & CE Act i.e., the reasons must be reflected in any decision taken and in the impugned proceedings no reason is mentioned as to why overlooking the claim of the petitioner the 1st respondent preferred respondents 6 to 8 herein and therefore, the impugned order is contrary to the HR & CE Act.

12. Further, according to the learned Senior Counsel appearing for the petitioner, as per Section 65 (4) (a) of the HR & CE Act the Commissioner has power to modify or cancel any scheme to bring it in consistent with the provisions of the HR & CE Act and the Rules made thereunder. Such a power is specifically available under sub-clause (b) of Section 65 (4) of the HR & CE Act. According to the learned senior Counsel appearing for the petitioner, the Commissioner has not invoked this power in respect of the subject scheme and therefore, it should be construed that the scheme does not run counter to the provisions of HR & CE Act and therefore, any appointment to the office of the non-hereditary trustee must be made within the frame work of the scheme. He would further contend that in the absence of any power exercised by the Commissioner under such provision would unequivocally point out that the provision of the scheme must be enforced in the matter of appointment of non-hereditary trustees and if that is the position of law, then the appointment of 7th respondent as non-hereditary trustee as well as the impugned proceedings will have to be set aside.

13. While making his submission, the learned Senior Counsel appearing for the petitioner relied on four decisions:

(i) **T. Lakshmikumara Thatachariar v. Commissioner, H.R.C.E. [(1998) 6 SCC 643].**

(ii) **Jagadguru Kari Basavarajendraswami of Gavimutt v. Commissioner of Hindu Religious & Charitable Endowments [CDJ 1964 SC 59].**



- (iii) **Area Committee, Hindu Religious and Charitable Endowments (Administration Dept) Nagapattinam represented by the Asst. Commissioner v. L.Kasinathan Padayachi & Others [CDJ 1974 MHC 249] and**
- (iv) **Commissioner, Hindu Religious and Charitable Endorsements Administration Department, Madras v. Smt.P.S.Sethurathinam [CDJ 1999 SC 64].**

14.The first decision of the Hon'ble Supreme Court deals with the power of the authorities under the HR & CE Act for modifying or cancelling the Scheme in order to bring it within the framework of the HR & CE Act and such powers are held to be valid. As regards the second decision is concerned, according to the learned Senior Counsel submitted that unless modifications are made in the scheme under the provisions of the Act, the scheme is deemed to have been made under the Act and the same will have to be enforced. As regards the third decision is concerned the same is not helpful to the case of the petitioner in view of the inclusion in the judgment that the provisions made in the Act will prevail over the provisions of the scheme and the scheme will suffer from repugnancy as provided under Section 118(2)(ii) of the HR & CE Act. The 4th decision deals with the power of the authority to modify the scheme framed pursuant to a decree of a Civil Court, which power was held to be valid and reaffirmed.

15.The learned Senior Counsel on the basis of the above citations would strongly urge that no inconsistency is noticed or recognized by the authorities of the HR & CE Act and both the power for cancelling or modifying the scheme has not been exercised under Section 65(4)(b) of the Act and no repugnancy can be noticed as per the provisions of the Scheme and the Act. The authorities concerned has to enforce the provisions of the scheme as per the provisions of the HR & CE Act. In the instant case the 7th respondent suffers from disqualification by crossing the upper age limit of 65 years and therefore the impugned proceedings appointing him has to be set aside and the petitioner ought to have been nominated in his place as the petitioner satisfies both the provisions of the Scheme and the HR & CE Act, as he did not suffer any disqualification as per the scheme.

16.Per contra, Mr.T.Mohan, the learned counsel appearing for the 7th respondent would contend that earlier the petitioner himself was appointed as non-hereditary trustee under the same system of appointment and after having been appointed as non-hereditary trustee cannot turnaround and blame the same method of selection process. The person who had earlier taken the benefit of the system for his appointment cannot now turn and accuse the same system because of his non-selection. In any event, Mr.T.Mohan, the learned counsel appearing for the 7th respondent would submit that the contents of the affidavit filed in support of the writ petition do not make a strong case against the action taken by the first respondent in appointing the private respondents as non-

concerned
would sub

17. Shri. T. Mohan, the learned counsel appearing for the 7th respondent would further contend that originally under Section 26 (b) of the HR & CE Act the upper age was prescribed as 70 years and the provision was subsequently amended and removed by way of Amendment Act in 2006, which came into force on 16th July, 2006. By the amendment, upper age limit of 70 has been removed. According to the learned counsel for the 7th respondent, the appointment of the 7th respondent is well within the frame work of the HR & CE Act and Clause IV of the Scheme which is repugnant to Section 26(b) of the HR & CE Act is void to the extent of prescribing of upper age limit as 65 years in terms of the provisions 118(2)(b)(i) of the HR & CE Act. According to the learned counsel for the 7th respondent, the framers of the Act have subsequently removed the upper age limit from the year 2006. Therefore, the upper age limit prescribed under the scheme would run counter to the specific provisions of the Act and therefore the scheme cannot be pressed into service in respect of the condition of upper age limit.

18. The learned counsel for the 7th respondent would also further contend that the first respondent has taken reports from the Joint Commissioner, the second respondent herein as to the credentials of each of the candidates and thereafter, the final decision was made vide the impugned order dated 20.10.2016 on the basis of the reports. Therefore, the petitioner cannot be heard to complain against the impugned proceedings of the appointment of the 7th respondent as he himself is the beneficiary of the such system in the past.

10. Mr. M. A. Jamal Khan, the learned Senior Counsel appearing for
the 6th respondent and Mr. K. Prabhakar the learned counsel appearing
for the 8th respondent would substantially adopt the arguments

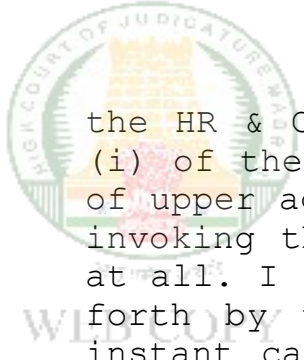


advanced by the learned counsel appearing for the 7th respondent. The learned counsels would reiterate the fact that as far as respondents 6 and 8 are concerned they had not suffered any disqualification as even as per the scheme as admittedly they are below 65 years. Moreover, respondents 6 and 8 have not been selected to the office of the non-hereditary trustees earlier like the petitioner. Therefore, their appointments cannot be questioned in the absence of disqualification suffered by them. Therefore, the counsels appearing for the respondents 6 and 8 would urge this Court to dismiss the Writ Petition as devoid of merits.

20. The learned Special Government Pleader appearing for the respondents 1 to 3 and 5 would submit that the provisions of the HR & CE Act will prevail in case of repugnancy. The learned Special Government Pleader would submit that the scheme in clause VI for appointment to the office of non-Karaikarar i.e., non-hereditary trustee for a period of 5 years. However as per Section 47(iii) the Trustees can hold office only for a term of two years. The petitioner, who was earlier appointed as non-hereditary trustee only for a period of two years in view of the above said provisions of the Act and when he was appointed as such, he did not raise any issue for modification of the scheme that his appointment would continue for 5 years. Therefore, the contention put forth on behalf of the petitioner suffers from double standards. Firstly, resorting to the provisions of the scheme as against the 7th respondent and secondly resorting to the provisions of the HR & CE Act under which he was appointed to the office of the non-hereditary trustee. Therefore, the learned Special Government Pleader would contend that the plea of the petitioner suffers from lack of bonafides. Moreover, as per Section 47 of the Act, the first respondent is empowered to appoint, if being substantially satisfied and in the absence of strong malafides the impugned proceedings passed by the first respondent cannot be validly questioned. In all the learned Special Government Pleader appearing for the official respondents would submit that the petitioner has not come forward with strong case for interference by this Court.

21. I have considered the submission made by the learned counsels appearing for the parties and perused the pleadings and the materials available on record.

21. The objections raised by the learned Senior Counsel appearing for the petitioner regarding the disqualification suffered by the 7th respondent due to passage of 65 years cannot be countenanced in law for the simple reason that admittedly the HR & CE Act does not provide an upper age limit, which was removed by the Amendment Act in 2006. When a decision was taken by the framers of the Act to remove the upper age limit, the upper age limit prescribed under the provisions of the scheme will have to give way to the application of the provisions of the HR & CE Act. After 2006, clause IV of the scheme in regard to prescription of upper age limit becomes repugnant to the HR & CE Act and therefore



the HR & CE Act alone will prevail in terms of Section 118(2) (b) (i) of the HR & CE Act. In view of the fact that the prescription of upper age limit is repugnant of the HR & CE Act the question of invoking the power under Article 65 (4) of the Act does not arise at all. I find there is a considerable force in the contention put forth by the learned counsels for the respondents that in the instant case it is matter of repugnancy of the provisions of the HR & CE Act and not inconsistency and therefore, the challenge to the appointment of respondent No.7 on the basis of the fact that he has crossed the age of 65 years has to necessarily fail.

22.As regards the other contention raised by the learned senior Counsel for the petitioner that no reason has been spelt out by the first respondent in the impugned proceedings, it appears that after obtaining report from the Joint Commissioner about the appointment of non-hereditary trustees there had been a proper consideration of all the candidates and finally the impugned order came to be issued. It is also relevant to mention here that the petitioner having been appointed earlier under the same system of appointment and having been in the office of non-hereditary trustee cannot now turnaround and complain the same system that because he has not been renominated. Therefore, this Court has no hesitation to hold that the contention put forth by the petitioner lacks bonafide and the same cannot be countenanced both by law and on facts. It is further to be seen that the appointment as non-hereditary trustee is only for a period of 2 years as per the provisions of the HR & CE Act and as per the provisions of the scheme which prescribes 5 years period and the petitioner having accepted the provisions of the HR & CE Act now challenged the appointment of 7th respondent pointing out that the provisions of the Scheme should made applicable for such appointment. Such contention has rightly been countered by the learned counsel appearing for the respondents that it suffers from double standards and it is a desperate attempt on the part of the petitioner to scuttle the appointment of the private respondents.

23.Moreover, as contended by the learned counsels for the respondents no valid and strong case was pleaded in the affidavit or in the grounds as against the official respondents particularly against respondent No.1 for passing the impugned order. In any event as stated supra reports have been obtained from the Joint Commissioner by the first respondent before proceeding to issue the impugned order. Therefore, the first respondent has followed the procedure contemplated in the Act and this Court does not find any illegality in the action taken by the first respondent. From the materials available and the pleadings it could be seen that the impugned proceedings are well within the provisions of the HR & CE Act and as far as the provision of the Scheme which is repugnant to the provisions of the H.R. & C.E. Act, the first respondent acted well within the frame work of the provisions of the HR & CE Acts and the Rules framed thereunder and in all the fours the impugned order is held valid and sustained.



24. Finally it should be seen that no clinching materials was shown or made available for grant of relief to the petitioner. The averments and the grounds raised in the writ petition would eventually demonstrate the fact that the petitioner had eventually made a feeble attempt to set aside the order made by the 1st respondent towards selection of respondents 6 to 8 as non-hereditary trustees. The contention of the petitioner in its entirety lacks bonafides and the same intended to sub-serve his own ends. In the circumstances, the petitioner has not made out any iota of case for interference by this Court.

25. In the circumstances, the Writ petition is devoid of merits and substance and therefore, the same is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CS II)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowments (Administration)
Department,
Nungambakkam,
Chennai - 600 034.

2. The Joint Commissioner,
HR & CE Department,
Sivaganga.

3. The Assistant Commissioner,
HR & CE Department,
Paramakudi.

4. The Inspector,
Hindu Religious Charitable Endowment Department,
Tirapattur I,
Sivaganga District.

+1cc to Mr. RM. Arun Swaminathan, Advocate, SR. 5504

+1cc to Mr. M. Sureshkumar, Advocate, SR. 54809

+1cc to Mr. K. Prabhakar, Advocate, SR. 54952

SJ

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