



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

W.P.[MD].No.12686 of 2018

and

W.M.P.(MD).Nos.11569 to 11571 of 2018

M.Gandhi

: Petitioner

Vs.

1.State of Tamil Nadu,
Rep by its Chief Secretary,
Fort.St.George, Chennai 9.

2.The State of Tamil Nadu,
Rep by its Secretary to Law Department,
Fort.St.George, Chennai 9.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to consider the representation dated 29.05.2018 to frame scheme/guidelines, form supervisory committees for the proper functioning of the public trusts and pass such other orders.

For petitioner

: Mr.V.Kumar

For respondents

: Mr.K.Chellapandian

Additional Advocate General

Assisted by Mr.M.Pandiarajan

Additional Government Pleader

O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner, an Advocate, has moved this Writ Petition in the nature of Public Interest Litigation, seeking a Writ of Mandamus directing the respondents to consider the representation dated 29.05.2018 to frame scheme/guidelines and form supervisory committees for the proper functioning of the public trusts.

2. We have heard Mr.V.Kumar, learned counsel for the petitioner and Mr.K.Chellapandian, learned Additional Advocate General assisted by Mr.M.Pandiarajan, learned Additional Government Pleader for the respondents.



3. We would note that the affidavit of the petitioner is most carefully drafted. We consider it appropriate to incorporate certain paragraphs, which read as follows:-

"20. I submit that if criminals and convicted persons are to be weeded out of public offices, it is not enough to debar them from contesting general and other elections in order to purify the system.

There should be some guidelines for the people aspire to be the trustees of a public trust as it is needless to point out that in India, public trusts operate, administer and manage NGOs, schools, colleges and hospitals involving human interaction and flow of funds in large measure thereby performing public functions. In such a case, the relationship between the trustees and trust is that of fiduciary capacity and thus, it is critical that the right person occupies the role of a trustee and see that the public are benefited as per the object of the Trust.

21. It is submitted that in regards fiduciary duty, Bristol and West Building Society v Mothew [1996] EWCA Civ 533, the landmark English case held that the core idea of fiduciary duty is the assumption of responsibility for the property or affairs of others. The SC in Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi, (2012) 13 SCC 61 held that the term "fiduciary" refers to a person having a duty to act for the benefit of another, showing good faith and conduct, where such other person reposes trust and special confidence in the person owing or discharging the duty. It has also held that in Marcel Martins v. M. Printer, (2012) 5 SCC 342 that the term "fiduciary capacity" is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other. Further, the commentary *The Modern Law of Unjust Enrichment and Restitution* by Gerard McMeel (OUP, Indian Ed. 2003) notes that "It is obvious that not every breach of duty by a fiduciary is a breach of fiduciary duty.... Breach of fiduciary obligation, therefore, connotes disloyalty or infidelity. Mere incompetence is not enough." From the above, it is clear that the duty a trustee owes in regards a public trust hinges on good faith and it is submitted that such a duty entrusted must be entrusted upon individuals of high standing in society.

22. I submit that, in fact, in the case reported in A.M. Shamsudeen v. A.M.



Mohamed Salihu (2003) 2 Mad LJ 526, the Madras High Court has held that "we are of the view that the interest of the trust and preservation of the trust and its property and promotion of the trust and its objects are all of paramount importance and the present trustees, by their failure to protect the trust property have acted against the interest of the trust... We are of the view, when the act done by the trustee is against the interests of the trust, that too, at the stage when the appeals are pending before the court, it is not appropriate to grant judicial blessing to those persons who have acted against the objects of the trust that they should be allowed to continue as trustees till such time the scheme Court decides the matter. We are of the view, the question whether a person is fit to continue as a trustee is not a question relating to the declaration of right to a property, but one which is relating to the capacity of the person to hold the office of the trustee... We are of the view that the carrying out of the objects of the trust properly and the maintenance of the trust property properly are more important than the desire of the founders that some of the family members should be trustees as it is of secondary importance after the constitution of the trust for public welfare. The trust administration like any other organization, has to be carried out by some human agency and if there is any inherent defect in the human agency in the performance of the trust objects, we hold that the objects of the trust for which it was established cannot be accomplished or achieved by allowing them to continue as trustees".

23. I submit that Indian Trust Act 1882 is a law relating to private trust and trustees. The said act is in respect of private trust and therefore the enactment of the year 1882 did not contemplate a situation where a criminal or a convicted person can be a trustee of a private trust leave alone a Public Trust. It is a matter of fact that private trust is a very narrow body and whereas the public trust having a larger scope and it impacts educational institution, organization, NGOs and hospitals as well. The object of the private trust is vastly different from a public trust.

However I find that as there was no law to govern public trust, the courts have been asked to step in. In the absence of law on the aspect on many an occasion the courts of law drew inspiration from some of the provisions of the Indian Trust Act. It is very relevant to note that Indian Trust Act, 1882



does not speak about any disqualification of a person to be a trustee of a public trust leave alone a convicted person. In the absence of any law similar to Bombay Public Trust Act and as the provision of Indian Trust Act, 1882 are inadequate, many trust which runs NGOs, schools and hospitals have people of shady background occupying the chair of a trustee albeit undeservingly. In many cases the trustees who have been convicted of an offence continue to be a trustee or aspire to be a trustee as there was no prohibition for them to occupy the coveted chair.

24. I submit, because there is no law governing a public trust, many of the NGOs, schools, colleges and hospitals run by public trust are occupied by people who have a shady background, who had defrauded the bank, cause of creating huge Non performing assets in banks involving public money, who are convicted of a criminal offence of a moral turpitude.

25. I submit, because the convicted persons are disqualified to occupy a public office but are acting as trustees of a public trust and the law applicable to hold a public offering shall be made applicable to a trustee of a public trust.

26. I submit that as the relationship between a trustee of a public trust is of fiduciary in nature and are supposed to act with utmost good faith. The fiduciary duty may arise not only from trust but also ex-lege and ex-conventine.

27. I submit, that as a rule of a fiduciary relationship, a trustee is not only as a duty not to take any secret or fiduciary benefit not authorized by law or by the trust deed under which he occupies but also the same yardstick may have to be applied in a relationship between the trustees and the public at large.

28. I submit, because if convicted person is allowed to be trustee of a Public Trust it will undermine the very concept of a public trust and will shake the confidence of the people at large who are the beneficiary of the trust and also those associate with the trust voluntarily by donating money to the public trust.

29. I submit, because the person bound in a fiduciary character is to protect the interest of other person and a fraudster, a criminal or convicted person cannot inspire any confidence among



31. I submit, because the Hon'ble Supreme Court observed in "Pierce Lesslie and Co Vs. Nellie Watshere reported in AIR 1969 SC 843",

Needless to point out a criminal or convicted person cannot put up himself in a position to safeguard the interest of another person.

33. I submit, because the principles of justice, equity and good conscience require that this Hon'ble Court to step in to weed out criminals, fraudster and convicted persons from Public Trusts.

35. I most respectfully submit that, as there is no relevant law governing a public trust similar to Sec.49 of the Bombay Public Trust Act or even Sec.26 of the Tamil Nadu Hindu Religious Charitable and Endowment Act, 1951 and as the provisions of the Indian Trust Act is not adequate, the criminals and convicted person are not supposed to take undue advantage of the loopholes in the law and therefore this Hon'ble court may have to step in and to frame



appropriate scheme, rules and guidelines for the proper functioning of a public trust. It is humbly submitted that considering the gravity of the situation governing public trusts and the absence of any sort of regulatory/Supervisory mechanism the court may be pleased grant the interim order as prayed hereunder".

4. Laudable as the objects of the petitioner may be, we are afraid that in entering upon the exercise suggested by him, we would be stepping into the legislative domain, which we are loath to do. However, we consider it appropriate to require the respondents, with all due seriousness, to consider the representation of the petitioner dated 29.05.2018 on merits and act thereupon.

5. The Writ Petition is disposed of, with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

1.The Chief Secretary to Government,
Fort.St.George, Chennai 9.

2.The Secretary to Government,
Law Department,
Fort.St.George, Chennai 9.

+1cc to Mr.V.KUMAR, Advocate, SR.No. 71461

+1cc to M/s.Special Government Pleader,SR.No. 71521

W.P.[MD].No.12686 of 2018
05.07.2018

NB

KK/RP/SAR-1/10.07.2018/6P-5C/