



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Judgment Reserved on : 15/12/2017

Judgment Pronounced on : 14/06/2018

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CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. (MD) .No.5262 of 2016 &
W.M.P. (MD) Nos.4708 & 4709 of 2016

V.K.Pandian

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary (in-charge),
Department of Tourism,
Culture and Religious Endowments,
Fort St. George,
Chennai - 600 009.

2. The Commissioner,
Hindu Religious and Charitable Endowments,
Chennai.

3. The Deputy Commissioner /
Executive Officer,
Arulmigu Subramania Swami Thirukovil,
Thiruparakundram,
Madurai - 625 020.

.. Respondents

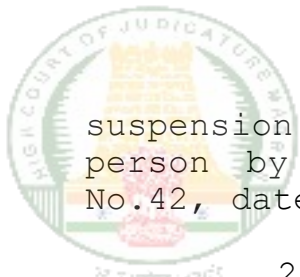
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the record relating to the order made vide G.O.(pa)No.41, dated 02.03.2016 r/w G.O.(pa).No.42, dated 02.03.2016 issued by the first respondent and quash the same.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
For Mr.F.Deepak

For Respondents : Mr.B.Pugalendhi, AAG., assisted by
1 and 2 Mr.V.R.Shanmughanathan
Special Government Pleader for R1 & R2

For Respondent-3 : Mr.S.Manohar

JUDGMENT



suspension of the Trustees of the Temple and appointment of a fit person by issuing G.O.(pa)No.41, dated 02.03.2016 r/w G.O.(pa). No.42, dated 02.03.2016.

2. The undisputed facts of the case are that Arulmigu Pandi Muneeswarar Temple is a public Temple, the Temple has been excepted by an order of Commissioner of Hindu Religious and Charitable Endowments Board and the Temple has been notified as falling under Section 46(iii) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "The Act").

3. As per the compromise decree passed in O.S.No.383 of 1973 by the District Munsif Court, Madurai, the Hereditary Trustees, who were also Poojaris of the Temple agreed to recognize all the parties to the proceedings as Hereditary Trustees and further agreed to perform Pooja on weekly turn basis. The Management of the Temple is administered by the lineal descendants of the two sons of Valliammal. Out of 10 Trustees, two of them were not in the Office due to the pendency of the cases, and the Temple was being administered by 8 Trustees.

4. The Commissioner, Hindu Religious and Charitable Endowments Department having found serious irregularities and mal administration of the Temple, issued a Show Cause Notice dated 21.03.2015 to take action under Section 53 of the Act. One of the Trustees challenged the Show Cause Notice in W.P.(MD)No.9952 of 2015. Since the learned Special Government Pleader, who was appearing for the Commissioner (HR & CE) Department conceded that the Competent Authority is the Government and not the Commissioner, the Writ Petition was allowed giving liberty to the Government to initiate against the Trustees as per law.

5. It is to be noted that the Government by a proceeding dated 02.03.2016 issued a charge memo containing the following charges:-

Charge No. 1: During surprise inspection by the Joint Commissioner on 07.01.2015, one of the poojaris of the temple by name P. Praveen Pandian was found to have placed three vessels as if they are regular hundials installed by the department and a sum of Rs. 2,000/- found in the vessels was confiscated by officials and put in the sealed hundial in the presence of public. Though severe action ought to have been taken against the said poojari by the hereditary trustees as provided under Section 56 of the Act, the hereditary trustees failed to perform their duties as per Section 28 and permitted the said poojari not only to perform pooja in the temple but also given share in the hundial collection thereby causing financial loss to the temple.

Charge No. 2: Though CCTV cameras were installed for the purpose of preventing the poojaris from compulsory collection of money from worshippers and to supervise the



collection in hundials etc, as per the directions of the Hindu Religious and Charitable Endowments Department, at the time of inspection on 07.01.2015, it was found that the entire system was hampered to ensure that nothing is recorded for 30 days prior to inspection and the trustees have indulged in such illegal activities and have conspired to do such acts.

Charge 3: Though one V.K. Pandian and P.M. Chellapandi Poojari who are the hereditary trustees of the temple were found to have installed hundials without permission during surprise inspection on 18.01.2000 and 15.03.2013, no action is taken against the said trustees. Hence, the trustees have failed in their duty and thereby acted against the interest of the temple.

Charge 4: One Shri. Jagathish Pandian, a poojari of the temple along with his wife and five others were caught red handed when they stole a sum of Rs. 10,225/- from the hundials installed by the department using keys, sticks, etc., and they were handed over to the Police and a case was registered before the Karuppayurani Police Station in F.I.R. No. 360/2013. No disciplinary action is taken against the said poojari by the Board of Trustees as provided under Section 56 of the Act. By this, the hereditary trustees have failed to perform their duty under Section 28(2) of the Hindu Religious and Charitable Endowments Department Act. The trustees have permitted the accused to perform pooja and get share in Hundial collections and thereby the trustees have caused financial loss to the temple.

Charge No. 5: Though the four shops belonging to the temple were put to public auction from 01.12.2004 for a period of three years, thereafter it was not put to public auction from 01.12.2007 thereby caused loss to the temple by forgoing the income by donation and allowed the tenants to continue for more than five years for personal gain contrary to Section 34(1) and 34(A) of the Hindu Religious and Charitable Endowments Act, 1959, and Rule 2 of Religious Institutions (Lease of immovable property) Rules 1963 and the trustees failed to fix the fair rent for the shop enjoyed by one T.K.S. Mani in terms of G.O.MS. No. 456, thereby causing loss to the temple.

Charge No. 6: Without permission of the department purely for personal gain of trustees tickets for Rs. 25, Rs. 50 and Rs. 100 are printed and sold in connection with Annadhanam contrary to rules despite the fact that the donations are received by issuing miscellaneous receipts thereby preventing the legitimate income by way of doing Annadhanam in the temple.



Charge No. 7: Without permission from the department and without any plan approval or estimation, a mandapam and steel arch are constructed by the trustees, in violation of Rules 12(3) and 13 of Maintenance Rules.

Charge No. 8: The Board of Trustees failed to initiate any legal action for the recovery of an extent of 2.44 acres of land in Survey No. 13/2 in Melamadai Village which was granted to the temple and illegally sold earlier by the trustees and thereby the trustees failed to perform their duty.

Charge No. 9: The hair offered by the worshippers are not encashed as per norms prescribed under Section 116(2) (xii-a) and thereby the trustees have caused financial loss to the temple for their personal gain.

Charge No. 10: New Savings Account has been opened in Canara Bank, Karuppayurani Branch without the permission from the department and the trustees are also operating the account despite the fact that the official savings account is available for the temple in Indian Bank of Karuppayurani branch, with an intention to exclude temple funds from audit inspection.

Charge No. 11: The Board of Trustees has allowed one Sivaji to hold office even though his term of office has expired on 12.08.2002. The hereditary trustees have colluded with the Managing Trustees and failed to take any action for conducting election, by allowing the said Sivaji Poojari to continue as Chairman of the Board of Trustees and by furnishing false information, without lawful order which is contrary to Section 48(2)(ii) of Act and thereby the Trustees have failed in their duties.

Charge No. 12: Suppressing the fact that this Court by order dated 05.01.2008 in W.P. No. 9950 of 2005 and W.P. No. 9235 of 2005 has directed to conduct election for Board of Trustees and to publish the result of the election, the Trustees have failed to initiate any action for the declaration of the result of election conducted on 07.11.2015, in a lawful manner. The Board of Trustees have also colluded with the Managing Trustees to enable him to function as a trustee as well the Chairman of Board of Trustees."

6. Reply was sent by some of the Trustees denying the charges. Pursuant to the charge memo, by the impugned orders the Trustees were placed under suspension and the Fit Person was appointed, who assumed the Office on 07.03.2016. A report dated 07.05.2016 was sent by the Fit Person regarding the irregularities and the defects found in the administration of the affairs of the Temple by the Hereditary Trustees.



7. On the basis of the report of the Fit Person and the report of the Inspector, the Joint Commissioner (HR & CE), Madurai has recommended appointment of an Executive Officer for the Temple. On consideration of the recommendations of the Joint Commissioner (HR & CE), the Commissioner (HR & CE), by an order dated 12.05.2016 appointed an Executive Officer for the Temple for a period of 5 years or until further orders, under Section 45(1) of the Act.

8. After considering the explanations and documents submitted by the Hereditary Trustees to the Show Cause Notice dated 02.03.2016, the Government vide G.O.Ms.No.158, Tourism, Cultural and Endowments Department, on 13.05.2016 removed the Trustees under Section 53 (2) of the Act. In the meanwhile, the Fit Person issued a notification to issue license for collection of rooster, tonsured hair etc., in public auction. Challenging the proceedings referred supra, Writ Petitions, Writ Appeals and Civil Miscellaneous Appeals have been filed. The Division Bench, by a common judgment upheld the appointment of the Executive Officer and issuance of tender notification, however, set aside the order of removal of the Trustees and remanded the matter to the Government to pass order afresh after conducting an enquiry under Section 53(3) of the Act.

9. With regard to an order of suspension under Section 53 (4) of the Act, there was a difference of opinion and the Author of the Judgment Mr.Justice S.S.Sundar held that no notice is required before placing the Trustees under suspension, under Section 53(4) of the Act, but Mr.Justice Nooty. Ramamohana Rao opined Trustee has to be put on notice before suspending under Section 53(4) of the Act. Hence, this Reference .

10. The only issue to be answered in the present Reference is whether a notice is required before placing the Trustee under suspension as per Section 53(4) of the Act.

11. Heard Mr.R.Singaravelan, learned Senior Counsel, representing Mr.F.Deepak, learned counsel for the petitioner; Mr.V.R.Shanmughanathan, learned Special Government Pleader for the respondents 1 and 2 and Mr.S.Manohar, learned counsel for the third respondent and perused the materials available on record.

12. The learned Senior Counsel for the petitioner urged that the charge memo dated 02.03.2016 clearly states that if explanation is not received within 15 days further action under Section 53 would be taken, but on the same day orders impugned in the Writ Petition have been passed and that though Section 53(4) of the Act has not spelt out notice before interim suspension, there is no exclusion of applicability of principles of natural justice, hence Trustee is entitled to put on prior notice.

13. In support of the submissions, the following decisions have been relied upon and the relevant portions are as follows:-



13(1) **AIR 1961 Kerala 87 (Manavikrama Zamorin Raj of Kozhikode Vs. Commissioner, HR & CE)**

" 8.

We feel a trustee is entitled to such a fair opportunity of making relevant statements and of controverting the grounds, on which immediate action of his being suspended from his hereditary right of managing the trust, is contemplated. Such a notice admittedly has not been given, and, therefore, the order, wherein the writ petitioner had been directed to hand over immediate charge to the 3rd respondent must be vacated. In Courts, I orders urgently required are issued with notice to the party concerned, of showing cause against such orders being made final and authorities vested with quasi-judicial powers, would do well to adopt, some similar procedure. The petitioner's learned advocate has drawn our attention to the explanations by the writ petitioner for granting the lease; and they deserve fair adjudication even before the orders in the proceedings under S. 45(3) are passed. We would, therefore, allow this petition and quash the part of the order immediately suspending the petitioner pending the inquiry into the charges framed against him. The inquiry into the charges framed, would proceed, and nothing stated in this order, would prejudice what is sub-judice before the lower tribunal. The writ petition is thus partly allowed, and, having regard to the circumstances of the case, the parties should bear their own costs. "

13 (2) **1978 1 SCC 405 (Mohinder Singh Gill & another vs. The Chief Election Commissioner, New Delhi & Ors.**

"56. "Normally, natural justice involves the irritating inconvenience for men in authority, of having to hear both sides since notice and opportunity are its very marrow. And this principle is so integral to good government, the onus is on him who urges exclusion to make out why"

13(3) **AIR 1978 SC 597 (Maneka Gandhi vs. Union of India)**

" But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of



the statutory power, the audi alteram partem should be wholly excluded."

13(4) 1991 2 LW P.213 (T.P.Radhakrishnan & 3 ors. Vs. The Asst. Commissioner, HR & CE, Madras-34 & Ors.)

"10. ... The scrutiny of the records will clearly show that the 1st respondent has not applied his mind in the matter of appointing the Fit Person. After issuing notice for the appointment of non-hereditary trustee u/s. 47 and 49 of the Act, the 1st respondent proceeded to appoint the Fit person; When the character of the institution is in question non hereditary trustee cannot be appointed. To get over this situation, the 1st respondent thought to appoint the Fit person suddenly so that the properties could be taken possession by the respondents. The impugned order has been passed in gross violation of principles of natural justice. The 1st respondent had neither accepted nor rejected the request of the petitioner to grant time for sending reply to the show cause notice. In this view of the matter, the impugned order has to go on the ground of violation of principles of natural justice."

13(5) (1993) 3 SCC 259 (D.K.Yadav vs. J.M.A. Industries Ltd.)

"7. Particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects the principles of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies."

8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In



Mohinder Singh Gill v. Chief Election Commissioner [(1978) 1 SCC 405 : (1978) 2 SCR 272, 308-F] the Constitution Bench held that 'civil consequences' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country ... they include ... rights capable of being enforced or redressed in a civil action... In State of Orissa v. (Miss) Binapani Dei [(1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266] this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice"

13(6) **Manu/TN/1061/1997 = 1997 (2) MLJ 588**

(PL.S.KR.L.Chandramouleeswaran & Ors Vs. The Commissioner, HR & CE, Administration Dept., & Ors.

"20. ...

The power vested in the Commissioner under Section 45(1) of the Act being a very drastic one, it has to be exercised cautiously, reasonably and fairly as the exercise of such power may even result in the effective elimination of the hereditary trustee from management and administration of the institution. Therefore it is, that natural justice and fairplay require that the Commissioner should properly exercise the power under Section 45(1) of the Act, after being satisfied that the institution has not been properly managed and the then administration leaves much to be desired and requires to be toned up or improved and the appointment of an Executive Officer is justified to secure such better administration. This can be done only after communication to the hereditary trustee of the reasons, which, according to the Commissioner justified the appointment of an Executive Officer and after calling for an explanation from him with reference to the irregularities and mal administration and after considering the same. If, after adhering to these requirements, the Commissioner still finds that the interests of the institution would be served better only by the appointment of an Executive Officer, he may properly exercise the power under Section 45(1)."

21.



22. The power under Section 45(1) does not mean that the Commissioner, if he so wills, though there is no reason whatever justifying can exercise the power and appoint an Executive Officer. If the Commissioner feels that the two trustees at whose instance the Executive Officer has been appointed are incapable of looking after the welfare of the temple in their turn or rotation, the Commissioner can appoint the Executive Officer."

13(7) **AIR 1998 Supreme Court 3261 (Basudeo Towary Vs. Sido Kanhu University & Ors.**

"12. The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, statutes, rules or regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to the Act, rules, statutes and regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, statutes, rules or regulations, etc., a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry, the person whose appointment is under enquiry will have to be issued a notice. If notice is not given to him, then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha case [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213 : AIR 1991 SC 101] . In such an event, we have to hold that in the provision, there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, statute, rule or regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how Section 35(3) in this case will have to be read.

<https://hcservices.ecourts.gov.in/hcservices/> 13. Admittedly in this case, notice has not been given to the appellant before holding that his appointment is irregular or unauthorised and ordering termination of



his service. Hence the impugned order terminating the services of the appellant cannot be sustained."

13(8) 2006 (2) CTC 49 (N.Sivasubramanian Vs. The Govt., of T.N. HR & CE Dept., Chennai- 9.)13.

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"Here in this case, based on the complaint/representation given by the 6th respondent, the impugned order is passed at the instance of the 6th respondent, appointing 5th respondent as Executive Officer, but without issuing notice to the petitioner or other trustees. A perusal of the impugned order amply establishes the fact that the second respondent has not issued any notice to any of the trustees including the petitioner. The administration of the temples, particularly the denominational temples, by the trustees is a valuable right and the same cannot be lightly divested under the guise of exercising power under Section 45(1) of the H.R. & C.E. Act. The impugned order having civil consequences against the petitioner and other trustees, the second respondent is bound to give notice to the petitioner and other trustees and only after hearing their objections, if any, the Executive Officer can be appointed, if the explanation submitted by the trustees are not satisfied."

13(9) (2008) 13 SCC 597 (BSNL & another vs. BPL Mobile Cellular Ltd. and ors.

"52. We will assume that the contention of the learned Additional Solicitor General that the internal circulars are issued for their application by the local officers. If they have committed a mistake, the same could be rectified. Indisputably, mistakes can be rectified. Mistake may occur in entering into a contract. In the latter case, the mistake must be made known. If by reason of a rectification of mistake, except in some exceptional cases, as for example, where it is apparent on the face of the record, mistake cannot be rectified unilaterally. The parties that would suffer civil consequences by reason of such act of rectification of mistake must be given due notice. Principles of natural justice are required to be complied with. The fact that there was no mistake apparent on the face of the records is borne out by the fact that even the officers wanted clarification from higher officers. The mistake, if any, was sought to be rectified after a long period; at least after a period of three years. When a mistake is not rectified for a long period, the same, in law, may not be treated to be one."

<https://hcservices.ecourts.gov.in/hcservices/>

13(10) 2010(2) CWC 915 (Sri Devi Ellamman Paripalana Sangam, Rep. by its Secretary C.Chockalingam Vs. The Assistant



Commissioner, HR & CE, Chennai 34 & Ors.

"13. In fact, Mr.T.Chandrasekar, learned counsel for the Hindu Religious and Charitable Endowments Act submitted that there is no provision under Section 49(1) to issue notice before any order is passed. When a person is admittedly administering the Temple and a copy of the impugned order has been marked to the Petitioner Temple the department cannot say that no notice is required to be given to the petitioner. Moreover the impugned order has taken away the right of the Petitioner-Sangam, to administer the Temple in violation of the Principles of Natural Justice. It is well settled position of law that before passing any order, affecting the rights of the parties, Principles of Natural Justice should be followed and the affected person is required to be given notice."

13 (11) (2014) 5 SCC 75 (Dr.Subramanian Swamy vs. State of Tamil Nadu & Ors.

"69. We would also like to bring on record that various instances whereby acts of mismanagement / maladministration / misappropriation alleged to have been committed by Podhu Dikshitars have been brought to our notice. We have not gone into those issues since we have come to the conclusion that the power under the 1959 Act for appointment of an Executive Officer could not have been exercised in the absence of any prescription of circumstances/conditions in which such an appointment may be made. More so, the order of appointment of the Executive Officer does not disclose as for what reasons and under what circumstances his appointment was necessitated. Even otherwise, the order in which no period of its operation is prescribed, is not sustainable being ex facie arbitrary, illegal and unjust."

14. Per contra, it is contended by the learned Special Government Pleader that the object of Section 53(4) of the Act is to meet out emergent situation and only as a temporary measure, Trustees are kept out of administration temporarily and they are not removed from the office permanently as a punitive measure, since, interim suspension under Section 53(4) of the Act cannot be termed as a punishment as one under Section 53(2) of the Act. The Act does not contemplate issuance of prior notice before passing order under Section 53(4), hence, no notice is enquired.

15. It is further contended that the issue was already decided by the Division Bench of this Court in **2016 (1) CTC 9 (C.Andiappan v. The Joint Commissioner, Tamil Nadu , HR & CE Board)** and **2010 (1) CWC 881 (V.Vadivelu V.The Joint Commissioner, H.R. & C.E Department)**, so one Judge in the Division Bench cannot disagree within the Two Judges Bench and if at all the matter could have



been referred to a larger Bench.

16. Learned Special Government Pleader cited the following decisions in support of his case:-

16(1) **2010 (1) CWC 881 (V.Vadivelu V. The Joint Commissioner, H.R. & C.E. Department),**

"3. From a perusal of Section 53(4) of the Act, it is evident that pending disposal of the charges framed against the trustee, the Appropriate Authority may himself could suspend and appoint a fit person to discharge the duties and perform the functions of the Trust. Though under Section 53(4) of the Act, the Appropriate Authority is given power to frame charges under Section 53(3) of the Act against the trustee and give him an opportunity of meeting such charges of testing the evidence adduced against him and of adducing evidence in his favour, the suspension order having been passed in this case as an interim measure, pending enquiry into the charges by invoking power under Section 53(4) of the Act, I am of the view that before placing the petitioner under interim suspension, no notice is contemplated in the said provision. Only if a final order is passed suspending the petitioner as a punishment, notice as contemplated under Section 53(3) of the Act has to be issued and opportunity should be given. In this case, the interim suspension order having been passed, the submission of the learned counsel for the petitioner is sustainable. Further, if the petitioner is aggrieved over the order of suspension, he can very well file Appeal under Section 54(5) of the Act before the Competent Authority."

16(2) **2011 (4) SCC 589 (Union of India V. S.K.Kapoor)**

"9. It may be noted that the decision in S.N. Narula case [(2011) 4 SCC 591] was prior to the decision in T.V. Patel case [(2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98] . It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in S.N. Narula case [(2011) 4 SCC 591] was not noticed in T.V. Patel case [(2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98] , the latter decision is a judgment per incuriam. The decision in S.N. Narula case [(2011) 4 SCC 591] was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court."

16(3) **2016 (1) CTC 9 (C.Andiappan V.The Joint Commissioner, Tamil Nadu, H.R. & C.E. Board)**

"30. The next contention of the learned senior



counsel for the appellants is that before passing the order appointing a fit person, no notice was issued and no opportunity was given. Though Section 53(4) which empowers the appropriate authority to appoint a fit person, does not provide for the observance of the principles of natural justice, it is contended by the learned senior counsel for the appellants that if the appointment of Executive Officer in the place of the existing trustees is to be preceded by the observance of the principles of natural justice, the same reasoning would apply even to the appointment of a fit person.

31. In this regard, the learned senior counsel for the appellants relies upon the decision of this Court in *D.R. Nagarajan v. The Commissioner* (1970 (2) MLJ 599), wherein the Court pointed out that the power under Section 45 by its very nature is a drastic one and that therefore it is to be exercised reasonably and fairly. The Division Bench also observed that the right to succeed to the office of trusteeship is akin to a property right and that therefore, before making the appointment, the hereditary trustee must be informed of the reasons and his explanation called for. Therefore, on the basis of the said judgment, it is contended by the learned senior counsel for the appellants that the respondents ought to have followed the principles of natural justice before completely eliminating all the hereditary trustees from the scene and appointing a stranger as a fit person.

32. But, the said contention does not merit acceptance. As we have pointed out earlier, the Act contemplates two types of suspension. One is a suspension pending enquiry, passed under Section 53(4) and another is a suspension by way of punishment passed under Section 53 (2). Suspension as a measure of penalty cannot be imposed without following the principles of natural justice, as these principles are in-built in sub-section (3) of Section 53 itself. But, to say that even to place a trustee under suspension pending enquiry into charges is something that would actually make the procedural safeguard, completely submerge the very purpose of placing a person under suspension.

33. Whether it is in service jurisprudence or it is in the law relating to Trusts, the suspension of a person, pending enquiry into grave charges, is to keep him out of office, for the time being until the completion of the enquiry. It has two purposes to be served. The first is to ensure that the evidence on record is not tampered. The second is to prevent further acts of irregularities being committed, even when an enquiry into grave charges is going on.

34. Mr. M. Vallinaygam, learned senior counsel



for the appellants, submitted that the suspension of the hereditary trustee of a temple or endowment should not be treated on par with the suspension of a Government servant. A Government servant, even if he is suspended pending enquiry into grave charges, does not lose his status. He continues to be a Government servant. Even his monetary rights are protected to some extent, in the form of subsistence allowance. But, when the hereditary trustee of a Temple or Endowment is placed under suspension, he loses his very status. Therefore, the learned senior counsel contended that the law relating to the suspension of a Government servant pending enquiry into grave charges cannot be applied to the suspension of a hereditary trustee.

35. We have no difficulty in accepting the above submission. The suspension of an employee in the private sector or a Government servant stands on a different footing than the suspension of a trustee. But, it must be remembered that the rights of the employees or Government servants are protected by statutes or statutory rules, which occupy the field. The office of trusteeship is not protected by any statutory rule. Therefore, before reading into Section 53(4) of the Act, the principles of natural justice, one has to see whether the office of trusteeship is protected statutorily and if so to what extent.

36. It is true that shebaiti right or the right to the office of trusteeship is recognised in India to be akin to the right to property. But, there is a small distinction between the right to property and the right to the office of trusteeship. The right to property includes within it, the right to transfer the property for a consideration. An office of trusteeship cannot be transferred for a monetary consideration. Moreover, the right to property does not depend upon how one manages or mismanages the property. But, the right to the office of trusteeship depends upon the proper management and administration of the property of the Trust. A trustee of a public charitable or religious endowment, forfeits his right to hold the office, the moment he commits an act that belies the trust reposed in him. Therefore, the rigours placed upon the office of trusteeship are much more. Hence we are of the considered view that the observance of the principles of natural justice before slapping an order of suspension on a hereditary trustee under Section 53(4) of the Act pending enquiry into grave charges, is neither feasible nor required. Therefore, the submission of the learned senior counsel for the appellants is also rejected."



16(4) 2007 (7) SCC 482 (A.A.Gopalakrishnan v. Cochin Devaswom Board)

"10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

16(5) 2010 (10) SCC 744 (Competition Commission of India Vs. Sail)

"79. It is difficult to state as an absolute proposition of law that in all cases, at all stages and in all events the right to notice and hearing is a mandatory requirement of principles of natural justice. Furthermore, that non-compliance therewith, would always result in violation of fundamental requirements vitiating the entire proceedings. Different laws have provided for exclusion of principles of natural justice at different stages, particularly, at the initial stage of the proceedings and such laws have been upheld by this Court. Wherever, such exclusion is founded on larger public interest and is for compelling and valid reasons, the courts have declined to entertain such a challenge. It will always depend upon the nature of the proceedings, the grounds for invocation of such law and the requirement of compliance with the principles of natural justice in light of the above-noticed principles.

82. The exclusion of principles of natural justice by specific legislative provision is not unknown to law. Such exclusion would either be specifically provided or would have to be imperatively inferred from the language of the provision. There may be cases where post-decisional hearing is contemplated. Still there may be cases where "due process" is specified by offering a full hearing before the final order is made. Of course, such legislation may be struck down as offending due process if no safeguard is provided against arbitrary action. It is an equally settled principle that in cases



of urgency, a post-decisional hearing would satisfy the principles of natural justice. Reference can be made to *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] and *State of Punjab v. Gurdial* [(1980) 2 SCC 471 : AIR 1980 SC 319] .

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16(6) **2015 (8) SCC 519 (Dharampal Satyapal Ltd. V. CCE)**

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

41. In *ECIL* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , the majority opinion, penned down by Sawant, J., while summing up the discussion and answering the various questions posed, had to say as under qua the prejudice principle: (SCC pp. 756-58, para 30)

"30. Hence the incidental questions raised above may be answered as follows:

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are



not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an 'unnatural expansion of natural justice' which in itself is antithetical to justice."

45. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in *R.C. Tobacco* [(2005) 7 SCC 725] .

46. To recapitulate the events, the appellant was accorded certain benefits under the Notification dated 8-7-1999. This Notification stands nullified by Section 154 of the 2003 Act, which has been given retrospective effect. The legal consequence of the aforesaid statutory provision is that the amount with which the appellant was benefited under the aforesaid Notification becomes refundable. Even after the notice is issued, the appellant cannot take any plea to retain the said amount on any ground whatsoever as it is bound by the dicta in *R.C. Tobacco* [(2005) 7 SCC 725] . Likewise, even the officer who passed the order has no choice but to follow the dicta in *R.C. Tobacco* [(2005) 7 SCC 725] . It is important to note that as far as quantification of the amount is concerned, it is not disputed at all. In such a situation, issuance of notice would be an empty formality and we are of the firm opinion that the case stands covered by "useless formality theory".

17. A perusal of the records would reveal that the Division Bench in an unreported Judgment dated 26.02.1969 in W.A.No.101 of 1969 held that no notice was required to the Hereditary Trustees before appointing an Executive Officer. However, the subsequent Division Bench in **AIR 1971 Madras 295 (D.R. Nagarajan v. The Commissioner, Hindu Religious and Charitable Endowments Department)**

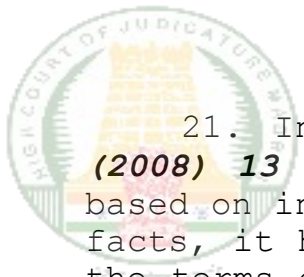


taking a different view from the earlier decision observed that the right to succeed to the Office of the Trustees is akin to a property right and that therefore before making the appointment, the Hereditary Trustee must be enquired for the reasons and his explanations called for. The decision in **Nagarajan's** case was followed by this Court in the case of **Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras v. K. Jothiramalingam** reported in (AIR 1985 Madras 341).

18. The Kerala High Court in **Manavikrama Zamorin Raj of Kozhikode** [AIR 1961 Kerala 87] referred by the learned Senior Counsel for the petitioner, held that a Trustee is entitled to a fair opportunity of making relevant statements of controverting the grounds, on which immediate action of his being suspended from his hereditary right of managing the Trust, is contemplated and if any order passed in disregard of principles of natural justice is liable to be set aside. But, the Division Bench of this Court in **2016 (1) CTC 9** and the learned Single Judge in **2010 (1) CWC 881**, have taken a consistent view that interim suspension under Section 53(4) of the Act is not by way of punishment and hence, no opportunity or notice to be given before passing the order of interim suspension. Hence, I am not able to subscribe the view taken by the Kerala High Court.

19. In **T.P.Radhakrishnan, PL.S.KR.L.Chandramouleeswaran & Ors, Sivasubramanian** and **Sri Devi Ellamman Paripalana Sangam**, this Court has taken a view that an order of appointment of an Executive Officer in violation of principles of natural justice would be an infraction of law. But, in the case on hand, the Division Bench has approved and affirmed the order of appointment of an Executive Officer and hence, the validity of the order of appointment of an Executive Officer cannot be argued in this Reference and no necessity arises to consider those decisions.

20. The Hon'ble Supreme Court in the case of **Menaka Gandhi** has observed that even administrative orders which involve civil consequences have to be passed after following the rule of natural justice. In **S.Govinda Menon**, the Hon'ble Supreme Court has held that if a punishment is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty then enquiry ought to have been conducted before awarding him such a punishment. In the case of **Mohinder Sing Gill**, it has been held by the Hon'ble Apex Court that Rules of Natural Justice as far as practicable to be followed. In **Basudeo Towary** (referred supra), an employee had been appointed contrary to the relevant law. The Hon'ble Supreme Court has held that in order to arrive at a conclusion the appointment is contrary to the provisions of the Act, a finding has to be recorded and unless such a finding is recorded, termination cannot be made, but to arrive such a conclusion necessarily an enquiry will have to be made as to whether such an appointment was contrary to the provisions of the Act.



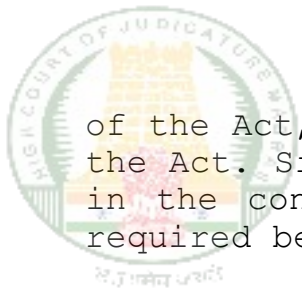
21. In the case of **Bharat Sanchar Nigam Limited and another (2008) 13 SCC 597**, a concluded contract was sought to be modified based on internal circulars, which have no statutory force. In those facts, it has been held that if the parties were to alter or modify the terms of contract, it was required to be done either by express argument or by necessary implication which would negate the application of the doctrine of "acceptance sub silentio" and no change in contract could have been made unilaterally. There is no dispute with regard to the principles laid down in the above judgments relied on by the learned Senior Counsel for the petitioner, but they have no application to the facts of the case.

22. It is settled law that the exclusion of principles of natural justice is also known concept and the legislature has the competence to enact laws which specifically exclude the application of principles of natural justice in larger public interest and for valid reasons. **[(1863) 14 CBNS 180 and (1935) 1 KB 249 (Reference)]**. It is also well settled that the requirement of following the principles of natural justice depends upon the facts of each case and for non-following of the procedure would not result in setting aside the order in all cases **[2015 (8) SCC 519]**.

23. In similar circumstances, the Hon'ble Supreme Court in **(2011) 4 SCC 589** held that Inter-Bench conflicts and prior decision of a coordinate Bench is binding on subsequent Bench of equal strength. If a subsequent coordinate Bench of equal strength wants to take a different view from prior decision of a coordinate Bench, it can only refer matter to a larger Bench. As stated above, the Division Bench in the case of **C. Andiyappan** has categorically held that while suspending the Trustee pending enquiry under Section 53 (4) no prior notice or opportunity is necessary and it would not amount to violation of principles of natural justice.

24. In the instant case, it is not in dispute that subsequent to issuance of charge memo pertaining to grave charges, orders of interim suspension of Trustees and appointment of fit persons came to be passed. It is mandatory in giving time to submit explanation to the charge memo. So, providing an opportunity to the persons charged to give an explanation would not preclude or disentitle the Competent Authority to pass an order of interim suspension of Trustees, especially, when there is no bar in the relevant statute. Therefore, the argument of the learned Senior Counsel for the petitioner that the impugned orders have to be set aside as they came to be passed even before expiry of time given for submitting reply to the charge memo has no merit acceptance.

<https://hcservices.courts.gov.in/hcservices/> 25. Similarly, by the impugned order the Trustees of the Temple have been suspended pending enquiry to the serious charges levelled against them by the Competent Authority under Section 53(4)



of the Act, and it is not passed under sub clause 2 of Section 53 of the Act. Since the Trustees were not suspended by way of punishment, in the considered opinion of this Court, no notice or enquiry is required before passing an order of interim suspension.

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26. By applying the principles laid down in **2011 (4) SCC 589** and **2016 (1) CTC 9**, this Court concurs with the Judgment of Justice S.S.Sundar and the Reference is answered accordingly.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Principal Secretary to Government,
Tourism, Culture and Hindu Religious and
Charitable (ANi3-1) Department,
Fort St. George, Secretariat, Chennai - 600 009.
2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai - 600 034.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Madurai - 625 001.
4. The Fit Person,
Arulmigu Pandi Muneeswarar Temple,
Melamadai, Madurai District.
5. The Executive Officer/ Joint Commissioner
of Arulmigu Subramaniaswamy Thirukovil,
Thirupparankundram as Executive Officer of
Arulmigu Pandi Muneeswarar Temple,
Melamadai, Madurai District.
6. The Deputy Commissioner /
Executive Officer. Arulmigu Subramaniaswamy Thirukovil,
Thirupparankundram.

Copy To:-

The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

RNS

TE/SKN-RSK/SAR-II : 31/07/2018 : 20P/8C