IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.14054 of 2015

A.Baskaran ... Petitioner

Vs.

1. The Secretary,
   Hindu Religious and Charitable
   Endowments Department,
   Secretariat, Chennai-600 009.

2. The Commissioner,
   Hindu Religious and Charitable
   Endowments Board,
   Nungambakkam High Road,
   Chennai-600 034. ... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the file of the second respondent in respect of the order dated 14.07.2014 passed in proceeding Na.Ka.No.55137/2010/A-1 and to quash the same.

For Petitioner :Ms.P.Gowri
for M/s.Lessi Saravanan

For Respondents :Mr.M.Maharaja,
Special Government Pleader (HR & CE)

O R D E R

Seeking to quash the order dated 14.07.2014 passed by the second respondent in proceeding Na.Ka.No.55137/2010/A-1, the petitioner is before this Court.

2. The petitioner is the erstwhile Managing Trustee of one Arulmighu Kadumbadi Chinnamman Thirukoil for a period of two years, which came to an end on 30.06.2007. It is claimed by him that the temple was founded in the year 1832 and it is being managed and administered by the legal heirs of the founder

Trustee. The Board vide the order dated 12.12.1947 made in O.A.No.254 of 1947 approved such appointments. While so, the second respondent passed an order dated 05.06.2010 appointing the Executive Officer of Karaneeswarar Temple, Saidapet, as the Fit Person of the said temple, by initiating proceedings against 14 hereditary Trustees of the temple and placing them under interim suspension.

3. It is claimed by the petitioner that though they have submitted explanation, the same was not considered by the second respondent in its proper perspective resulting in passing the impugned order removing the petitioner and one C.B.Balasubramaniya Chettiar from the Hereditary Trusteeship of the temple, while exonerating the 11 others and dropping the proceedings in respect of one deceased hereditary trustee. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that the temple falls under the category of Section 46(iii) of the Hindu Religious and Charitable Endowments Act, 1959, (in short, "HR & CE Act"), whereas, it is stated in the impugned order that the temple falls under the category of Section 46(ii) of the HR & CE Act. It is her submission that without considering the explanation submitted by the Hereditary Trustees properly, the impugned came order came to be passed and hence, the same is liable to be quashed for want of jurisdiction.

5. The learned Special Government Pleader (HR & CE) submitted that the second respondent is the competent authority to pass the impugned order and without exhausting the appellate remedy, the petitioner filed this writ petition.

6. The main contention of the learned counsel for the petitioner is that the annual income of the temple is more than Rs.10,00,000/- and hence, it comes under the category of Section 46(iii) of the HR & CE Act, and in such a case, as per Section 53(1)(a) of the Act, the Government alone is the "appropriate authority" to take the disciplinary action, i.e., to suspend, remove or dismiss trustees and the second respondent lacks jurisdiction. However, it is the claim of the respondents that the second respondent vide the proceedings Rc.No.78914/199 A.1, dated 10.12.1996 included the temple under Section 46(ii), and the same is not altered and hence, when the disciplinary action was taken against the hereditary trustees, the temple falls under the category of Section 46(ii), and there was no alteration of classification of the said temple at that time.

7. While there is no dispute with respect to the said legal position, Section 46 of the HR & CE Act empowers the Commissioner to publish a list of the religious institutions

based on income. Second proviso to Section 46 suggests that the Commissioner may alter the classification assigned to such institution in the list and enter the same under the appropriate classification in the said list, if the annual income of such institution exceeds the limits or falls below the limits for three consecutive years. Unless and until such alteration is made in the list and the list gets published, as provided under Section 46, the Commissioner is empowered to take action in terms of Section 53 of the HR & CE Act. Hence, the contention of the petitioner that the second respondent lacks jurisdiction has no merit acceptance.

8. Though there is no time limit stipulated in the said provision for the Commissioner to exercise such power to alter the status of the temple and publish the same based on income and the provision only says that the Commissioner “may” alter the classification assigned to such institution in the list and enter the same under the appropriate classification, if the annual income of such institution exceeds the limits or falls below the limits for three consecutive years, such alteration/reclassification should be done by the second respondent within a reasonable time. Admittedly, though the income of the temple exceeded Rs.10,00,000/- in the year 2002 itself, even as per the admission of the trustees and as per the report of the auditors of the year 2007, and the earlier classification under Section 46(ii) was made in the year 1996, the alteration/reclassification was not done by the Commissioner and the present proceedings were initiated only in the year 2010. As stated above, such alteration/reclassification has to be done by the Commissioner within a reasonable time. The procedure to be followed for such classification is not specified in the said provision.

9. At this juncture, it is to be stated that Section 86 of the HR & CE Act falling under the Chapter Budgets, Accounts and Audit (Chapter VIII) mandates the trustees of every religious institution to submit a budget showing the probable receipts and disbursements of the institution for the following fasli year to the competent authority. Section 87 mandates that the accounts of the religious institution should be audited and such audit report shall be sent by the Auditors to the concerned authority in terms of Section 88. Section 88(b) says that the auditor shall sent his report to the Joint Commissioner, Deputy Commissioner, in respect of institutions included in the list published under Section 46. Once, the Joint Commissioner/Deputy Commissioner receives the audit report, in addition to the other mandates, they have to submit a report to the Commissioner recommending for alteration/ reclassification of the temple. On such recommendation being made, the Commissioner shall, without any delay and within a reasonable time, exercise the powers

conferred under Section 46 of the Act in a just and fair manner and pass appropriate orders altering the classification of the temple.

10. In such circumstances, the first respondent is directed to frame appropriate rules in terms of Section 116 of the HR & CE Act in this regard as expeditiously as possible, but not later than three months from the date of receipt of a copy of this order.

11. As discussed, the impugned order is assailed only on the ground of lack of jurisdiction contending that only the Government has got powers and the Commissioner has no authority to decide the case on merits in view of the classification. It is relevant to refer that excepting the point of jurisdiction, no other point was urged by the learned counsel for the petitioner.

12. A Division Bench of this Court in P.Krishnamoorthy V. Commissioner, HR & CE Department, 2018 (2) CTC 55, while drawing the distinction between Section 26 and Section 53 of the HR & CE Act, observed as follows :

> "33. Section 53 of the Act is the power to suspend, remove or dismiss the trustees, and the appropriate authority may suspend, remove or dismiss any trustee if any one of the circumstances set out in Clause (a) to (k) of Section 53(2) of the Act are attracted. When action is proposed to be taken under Sub Section 2 of Section 53, the appropriate authority shall frame charges against the trustee concerned and give him an opportunity of meeting such charges, testing the evidence adduced against him. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge with reasons thereon. The appropriate authority has power to suspend a trustee pending disposal of charges and appointing a fit person by invoking his power under Section 53(4). The trustee who is aggrieved by an order passed under Sub Section 2 of Section 53 has an alternate remedy of appeal as provided under Sub Section 5 of Section 53.
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> 34.Thus, a plain reading of Section 53, would show that the power conferred on the appropriate authority is a disciplinary power, it pre-supposes that the trustee should be holding office. Unless it is so, the appropriate authority cannot suspend, remove or dismiss him. It is obvious a past trustee, who has demitted office, cannot be suspended, removed

or dismissed. Therefore, we have no hesitation to hold that Section 53 would stand attracted, only when a trustee is in office. That apart, the power underSection 53 as mentioned earlier, is a disciplinary power, vested with the appropriate authority, as this power is to be used by the appropriate authority, to dislodge a trustee from his office or to keep him out of office by way of suspension or to remove him, is undoubtedly a matter involving civil consequences and precisely for such reason, the framers of the legislation have introduced Sub Section 3 in Section 53, clearly enumerating the procedure to be followed, while proposing to take action under Sub Section 2 of Section 53. Thus, the power under Section 53 should not be mixed or confused with the power under Section 26 of the Act.

13. The Division Bench further observed as hereunder :

"53. One more submission made by the petitioners is that the religious institution having been classified under Section 46 (3), as its annual income is more than Rs.10,00,000/- (Rupees Ten Lakhs only), the Government alone is empowered to take action and that too under Section 53 and not under Section 26. This argument is not tenable for the reason that Section 46 of the Act operates in a different field pertaining to classification of religious institutions based on their annual income. It is no doubt true that the appropriate authority, who can take action against the trustees has been named, based on a classification done under Section 46 (3)."

14. The Division Bench categorically held that against the order passed under sub-section (2) of Section 53, the Trustees have an alternate remedy of appeal under Section sub-section (5) of Section 53 of the HR & CE Act.

15. Though it is argued briefly that the punishment of removing the petitioner and one C.B.Balasubramaniya Chettiar is harsh one and disproportionate to the charges levelled against the petitioner and it was passed without considering the explanations submitted by the Hereditary Trustees in their proper perspective, taking note of the fact that the petitioner failed to avail the appellate remedy available to him before the Government and the Fit Person came to be appointed only on the allegation that the Trustees were mismanaging the temple and had not been accounting for properly and causing loss to the temple and its properties, this Court is unable to countenance with the said submission.

16. In the result, this writ petition is disposed of, with the above directions. No costs. Consequently, M.P.No.2 of 2015 is closed. W.M.P.No.26752 of 2017 is dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   Hindu Religious and Charitable Endowments Department,
   Secretariat, Chennai-600 009.

2. The Commissioner,
   Hindu Religious and Charitable Endowments Board,
   Nungambakkam High Road,
   Chennai-600 034.

+2cc to Mr.Lesi Saravanan, Advocate sr.9956

+1cc to the Government Pleader sr.11515

W.P.No.14054 of 2015

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srg 21/02/2019