

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2019

CORAM:

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.R.P.(NPD) No.1647 of 2019
&
CMP.No.14858 of 2019

G.Mahesh

... Petitioner

Vs.

1.The Chairman
A.V.Charities
No.18, Dubash Street
Thruvizhandur
Mayladuthurai-609 001

... Respondents

2.Mr.Sundaresan
Prayer: Civil Revision Petition filed under Section 227 of Constitution of India
against the proceedings of the Principal Subordinate Judge (scheme Judge),
Mayiladuthurai, in D.No.240 in O.S.No.234 of 1994, dated 20.02.2019 and
consequent paper publication effected in Daily Thanthi dated 27.02.2019 in calling
for application for appointment of trustee in General Vacancy to the
A.V.Charities.

For Petitioner : Mr.K.Ramu

For Respondents : Mr.S.Sounthar

ORDER

Notification issued to the election of a trustee to Anbanathapuram Vahaiyaras Charitable trust is under challenge now.

2. A.V.Charities is a trust managed according to a scheme framed in O.S.No.68 of 1948 dated 24.07.1951 in O.S.No.17 of 1960 on the file of Sub-Court, Mayiladuthurai. The trust is managed by six trustees elected from the five founder families. Five families represent five post of trustee and the sixth vacancy is treated as a general vacancy. Since the trust is managed by the five families of the founder trustee, one among them is appointed to the general turn of the trustees. Thus anyone of the five families will have two representatives in the trust.

3. Accordingly, there are five representatives from five families and the petitioner belonging to Pallavarayanpet family was elected to the general vacancy. While the matter stood thus one of the trustees belonging to the petitioner branch Pallavarayanpet family demitted office by efflux of time. The board of trustees resolved to fill up that one vacancy. However, the vacancy meant for Pallavarayanpet family was converted by substituting the petitioner in that vacancy and a notification was issued to select a trustee to the general vacancy. Challenging the said notification, the petitioner is before this Court. Whether the scheme provides for such conversion is the moot question here.

4. Clause 5(C) of the scheme decree framed for appointment of trustees read thus:

“(C) The appointment of a Trustee in any vacancy caused on the Board of Trustees by efflux of time, by resignation or removal or death or disqualification, shall be made by the court, from among male members of the five families as far as possible. It shall be the duty of the Manager provided for, herein, to intimate the occurrence of any vacancy to the court within three weeks of the occurrence and the court shall proceed to call for applications and make appointment to the vacancy having due regard to representation of the five families known as Anbanathapuram, Enathimangalam, Pallavarayapet, Karaikudi and Kanganamputhur families. A Trustee should be a major and should not be disqualified under the rules. It is open to the court, not to rigidly adhere to representation of each group, if efficient administration requires “a light departure”.

5. The above clause is made with an objective to make appointment to the vacancy having due regard to the representation of the five families. It does not mean that five families must compulsorily given representation. At times there may not be major male members from anyone of the branches. In such contingencies qualified members of the other families can be appointed to carry on with the efficient administration of the trust. All it is required is that as far as

possible the trustees shall be from the five families of the founders. With due regard to representation of the five families means that duly qualified members of the five families, subject to the contingencies explained above. In the very same clause discretion is conferred on the scheme Court to make “a light departure” rather than adhering to the representation of each group rigidly. This means according to the requirements prevailing at the relevant circumstances there can be little adjustments with regard to representation to the families. In other words ultimate object is to give representation to all five families with an eye on efficient administration of the trust.

6. In that perspective it is not mandatory to give representations to each of the family compulsorily. At times there may be slight deviations. In that view of the matter, if a vacancy is caused due to retirement of one of the branches, as far as possible, the usual practices is to select one qualified member of that branch. To circumvent the procedure, converting a trustee selected under general vacancy to substitute the family quota is unnecessary. The scheme also does not provide for.

7. Therefore, the notification issued to select one member under “general vacancy” for the vacancy caused due to retirement of Pallavarayanpet family is erroneous and illegal. The vacancy shall be notified to the vacancy of

Pallavarayanpet family and application shall be called for from the qualified members.

8. Accordingly, the impugned notification issued by the Principal Subordinate Judge (Scheme Judge) Mayiladuthurai, in D.No.240 in O.S.No.234 of 1994, dated 20.02.2019 is set aside. Considering the delay caused due to the pendency of this revision, a direction is given to the Principal Subordinate Judge (Scheme Judge) Mayiladuthurai to issue notification within one week from the date of receipt of a copy of this order and to complete the selection process within one month from the date of publication of notification.

9. The Civil Revision petition is accordingly ordered. No Costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

30.08.2019

Speaking Order/Non Speaking Order
Index : Yes/No
Internet: Yes/No
Note:Issue order copy today(13.01.2020)
kpr

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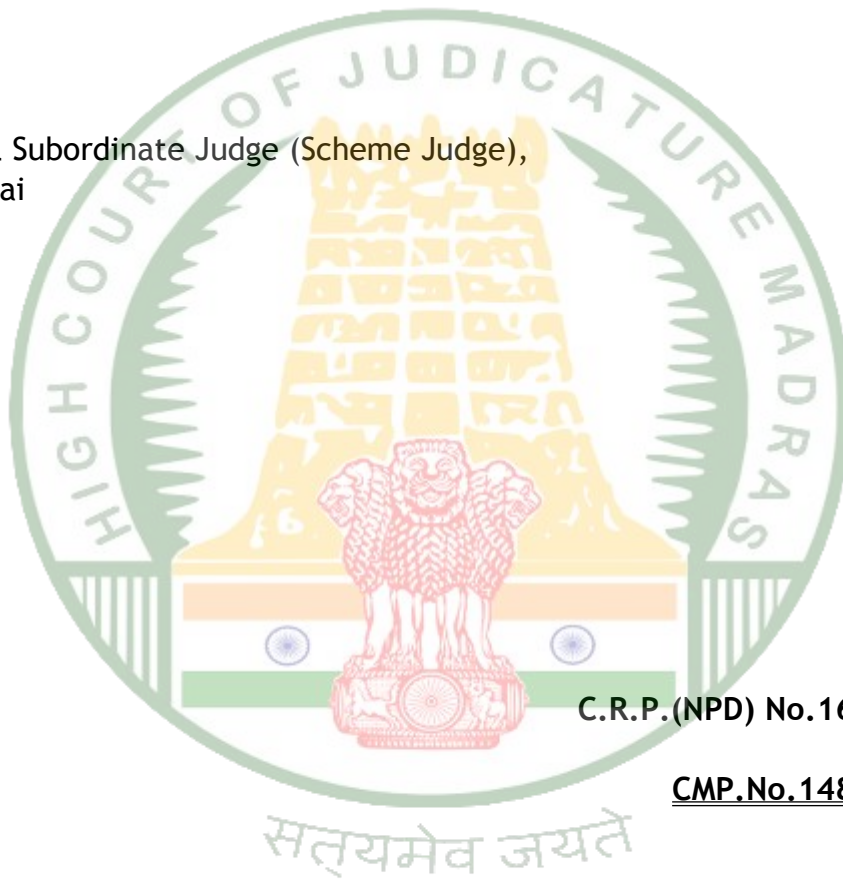
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M.GOVINDARAJ,J.

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To

The Principal Subordinate Judge (Scheme Judge),
Mayiladuthurai



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