

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Fourth day of December Two Thousand Twenty

PRESENT

THE HON`BLE MR JUSTICE R.MAHADEVAN

AND

THE HON`BLE MR JUSTICE P.D.AUDIKEVALU

WMP.NOS.16006 of 2018 AND 13991 OF 2020

IN WP.NO.574 OF 2015

THE COMMISSIONER, [PETITIONER IN BOTH THE PETITIONS]
HR & CE DEPARTMENT,
NUNGAMBAKKAM HIGH ROAD,
CHENNAI-34

Vs

1 THE DIRECTOR, [RESPONDENTS IN BOTH THE PETITIONS]
ARCHAEOLOGICAL SURVEY OF INDIA,
JANPAT,
NEW DELHI-110004.

2 THE SUPERINTENDING
ARCHAEOLOGIST, CHENNAI CIRCLE,
ARCHAEOLOGICAL SURVEY OF INDIA,
CHENNAI-3.

3 THE CHIEF SECRETARY, सतयमेव जयते
GOVERNMENT OF TAMILNADU, SECRETARIAT,
FORT ST.GEORGE,
CHENNAI-9.

4 HERITAGE CONSERVATION SOCIETY,
REPRESENTED BY SECRETARY, MR.SRIKUMAR,
102/10, KURUNJ STREET, POLEPETTAI,
TUTICORIN.

5 THE ADDITIONAL CHIEF SECRETARY TO [4TH RESPONDENT IN
GOVERNMENT OF TAMILNADU, TOURISM, WMP.NO.13991 OF 2020]
CULTURE AND RELIGIOUS ENDOWMENTS DEPT.,
SECRETARIAT, FORT ST.GEORGE,
CHENNAI-9.

5 THE SECRETARY

GOVERNMENT OF TAMILNADU, TOURISM,
CULTURE AND RELIGIOUS ENDOWMENTS DEPT.,
SECRETARIAT, FORT ST. GEORGE,
CHENNAI-9.

[4TH RESPONDENT IN
WMP.NO.16006 OF 2018]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to restructure the Expert Committee as proposed above to enable the Committee to function effectively (in WMP.No.16006 of 2018).

(ii) To restructure the expert committee as proposed above to enable the Committee to function Effectively so as to carry out approval of pending renovation works promptly (in WMP.No.13991 of 2020).

Order : These petition coming on this day for hearing upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of MR.P.H.ARAVIND PANDIAN, ADG, Assisted by MR.M.KARTHIKEYAN, Special Government Pleader for the petitioner, in both the petitions and of MR.G.KARTHIKEYAN, ASG on behalf of the first and second respondents, in both the petitions, the court made the following order:-

The Petitioner in both the Miscellaneous Petitions is the Commissioner, Hindu Religious and Charitable Endowments Department (in short, HR&CE Department), Chennai, who is the Sixth Respondent in suo motu W.P. No. 574 of 2015.

2. The prayer made in both the applications is to restructure the Expert Committee constituted by this Court.

3. Heard all the parties and perused the materials available on record.

4. In the order dated 25.10.2016, passed in W.M.P. Nos. 30265 of 2016 etc., cases in W.P. No. 574 of 2015, it was observed by this Court that to avoid unnecessary delay in carrying out the essential works relating to the temples as well as multiplicity of proceedings, a Committee of Experts would be appointed, which would consider the individual applications of the temples to decide what would be the essential works both from the perspective of architecture as well as Agamas.

5. Accordingly, by order dated 04.11.2016, this Court, to look into the issues of repairs and renovation to be carried out in the temples under the control of the Petitioner, suggested to constitute an Expert Committee consisting of the following specializations:-

- (i) Structural Engineering Expert
- (ii) Archaeological Expert
- (iii) Conservation Expert
- (iv) Traditional Stapathy
- (v) Two Agama Experts

That apart, the Departmental Representative will act as the Secretary of the Committee for facilitating its working and for furnishing records. It was also ordered that the Committee would have to give priority depending on the urgency, as some religious ceremonies have to be performed for which there are designated days.

6. Subsequently, on 07.11.2016, this Court constituted the Expert Committee by nominating the following persons as its members:-

Sl. No.	Designation	Name
(i)	Structural Engineering Expert	Dr. Arun Menon, Assistant Professor, Structural Engineering Lab, IIT
(ii)	Archaeological Expert	Tmt. Maheswari, Superintending Archaeologist
(iii)	Conservation Expert	Thiru. Sathyamoorthy
(iv)	Traditional Sthapathi	Thiru. Muthiah Sthapathi
(v)	Two Agama Experts	(i) Sri. Stala Shayana Bhattacharyar (Vaikhanasa Agama Vidvan Vyakarana Shiromani) (ii) Dr. S.Arunasundaram (Shaivagama)
(vi)	Member Secretary	Additional Commissioner (Thiruppani), HR&CE Department

7. Thereafter, the Petitioner filed the first application in W.M.P. No. 16006 of 2018 praying to reconstitute the Expert Committee, stating that the said Committee has started functioning by convening meetings in regular intervals, disposing the cases referred to it depending on the nature and urgency involved, etc. However, there have been practical and administrative difficulties in getting dates conducive for all the members to attend the meetings. It is further averred therein that two Agama Experts attended the meetings only on two occasions, viz., 17.11.2016 and 23.11.2016, and thereafter, they did not co-operate with other members and they have also not attended the meetings in spite of due intimation sent, as a consequence of which, the Committee is unable to decide on some works in which Agama opinion is essentially required; and resultantly, the essential works relating to the temples, which are in dilapidated condition, renovation and restoration works and Kumbabhishekam related works etc, which involve larger public interest and which are concerning the sentiments of the devotees, are being delayed. It is also stated therein that the Chief Stapathi, viz., Thiru.Muthaiah Stapathi, has been subjected to the criminal prosecution, due to which, the Committee could not function effectively. In such circumstances, according to the Petitioner, it is just and

necessary to restructure the Expert Committee, failing which, the object and purpose for which, it was constituted, would be defeated. Further, the Petitioner proposed to induct two more persons, apart from two Agama Experts nominated by this Court.

8. Taking note of the averments made in the affidavit and additional affidavits filed by the Petitioner in W.M.P. No. 16006 of 2018 and also considering the credentials of Thiru. K.Dakshinamoorthy, which appear to be good, this Court, by order dated 22.06.2018, nominated him as Traditional Stapathi member in the Expert Committee, in the place of Thiru.Muthiah Stapathi. Further, this Court directed the Petitioner to issue notice to two Agama Experts to elicit their views before replacement.

9. Be that as it may, the Petitioner has taken out another application in W.M.P. No. 13991 of 2020 to restructure the Expert Committee, stating that the Expert Committee has convened 41 meetings from 17.11.2016 to 04.06.2020, wherein, proposals for Thiruppani from 612 temples were placed and 428 proposals were approved, 83 proposals were found beyond the purview of the Committee and 43 were rejected. According to the Petitioner, one of the Agama Experts, viz., Sri. Stala Shayana Bhattacharyar, passed away on 18.06.2020 and another member by name Mr. S.Arunasundaram, did not co-operate with other members and he has also not attended the meetings in spite of due intimation and hence, the said Committee has to be reconstituted for carrying out the responsibilities assigned to it. Further, the Petitioner also suggested the names of persons for consideration to be nominated as Agama Experts in the Committee.

10. Mr.Rangarajan Narasimhan, appearing party-in-person as stakeholder, also filed a memo dated 05.08.2020 suggesting a name for consideration to be nominated as a member in the Expert Committee. According to him, there is no specific approach / guideline provided to the Expert Committee and hence, it operates in a very unstructured manner making it impossible to provide quality inputs and therefore, he requested to issue appropriate guidelines to the Expert Committee.

11. Upon notice, one of the Agama Experts, by name, S.Arunasundaram filed an affidavit on 25.09.2020, stoutly denying the allegations levelled by the Petitioner that he is not co-operating and attending the Expert Committee meetings. It is his case that initially, minutes were prepared by the Member Secretary of HR&CE Department to suit the convenience of the HR&CE Department and many matters, which were not cleared in the meetings, were shown as cleared and sent to him for signature, but he refused to sign and hence, the Member Secretary stopped sending the minutes. In the affidavit, it is further stated that the Member Secretary of HR&CE Department, is expecting the members to simply concur or sign on the dotted lines, believing whatever oral presentations made by the petitioning temples are true and sufficient to take an informed decision. That apart, the Member Secretary of HR&CE Department, had

scheduled the meetings and consideration of the proposals as if the presence of the Agama Experts or their opinions in the matters concerning Agama, is not necessary. It is further pointed out that the e-mails raising various issues were also not considered by the HR&CE Department. Thus, it is ultimately prayed that this Court may direct the Member Secretary of HR&CE Department to provide the very basic requirements of Agama Experts, which are necessary to perform his duties.

12. Refuting the averments so made in the affidavit filed by S.Arunasundaram, the Petitioner herein filed a detailed rejoinder dated 28.09.2020, wherein, it is inter alia stated that the said Agama Expert, by his act of willful disobedience of the order of this Court, has tried to create confusion over the smooth functioning of the Expert Committee and also tried to induct strangers, who are not at all connected with the temples in the guise of stakeholders. According to the Petitioner, the said Agama Expert, instead of offering constructive suggestion for taking up renovation works effectively from Agama point of view, is more interested in stalling the proceedings and the working of the HR&CE Department. Therefore, the Petitioner requested to re-constitute the Committee with additional members, so as to clear the pending proposals at the earliest.

13. Though various allegations were raised against each other, this Court is not inclined to delve into the same at this distant point of time, as the object behind the constitution of the Expert Committee is that the heritage temples with Archaeological and religious significance should be identified and maintained and renovation be carried out in a manner to ensure that no damage is caused. It is specifically pointed out by the learned Additional Advocate General assisted by the learned Special Government Pleader (HR&CE) appearing for the Petitioner that there are more number of cases pending before the Expert Committee and only because of opinion of the Agama Experts, the same are not disposed of by the said Committee.

14. This Court is of the view that temples and monuments are our valuable treasures and the same have to be properly maintained without changing or altering their ancientness or original value and heritage, not only because of their physical structures, but also the traditional principles of Agamashastras and Shilpashastras. In the present day circumstances, it is not possible to construct such temples, but it is very much possible to preserve the same to its originality and we are duty bound to contribute ourselves, at least by not causing any damage to the inscriptions or the structures, so that the heritage and the ancientness to which the temples belong, will be protected.

15. Taking into consideration the factors already noted above and keeping the totality of the circumstances in mind, this Court deems it just and necessary to reconstitute the Expert Committee, so as to effectively function and carry out the task assigned to it. Accordingly, the Committee is reconstituted with the following

members:-

Sl No	Designation	Name
(i)	Structural Engineering Expert	Dr. Arun Menon, Assistant Professor, Structural Engineering Lab, IIT
(i)	Archaeological Expert	Tmt. Maheswari, Superintending Archaeologist
(i)	Conservation Expert	Thiru. Sathyamoorthy
(i)	Traditional Sthapathi	Thiru K.Dakshinamoorthy
(v)	Agama Experts Saiva Agamas:- Vainava Agamas:-	(i) Dr. Sivasri K.Pitchai Gurukkal, Sri Karpaga Vinayagar Temple, Pillaiyarpatti, Sivaganga District. (ii) Thiru. K. Chandrasekara Battar (Raja Battar), No. 66, Sannathi Street, Tiruparankundram, Madurai - 625 005. (iii) Thiru. Anantha Shayana Battachariyar, No. 8, South Mada Street, Mahabalipuram. (iv) Thiru. T.Govintharaja Battar, No. 33/39, Sannathi Street, Thirukkurungudi, Nanguneri Taluk, Tirunelveli District.
(v)	Member Secretary	Additional Commissioner (Thiruppani), HR&CE Department

16. That apart, this Court is inclined to issue the following directions to the Expert Committee:-

- (i) The HR&CE Department shall formulate procedure for convening the meetings of the Expert Committee, with the convenience of its members and circulate the required papers with Agenda,

well in advance.

- (ii) The members of the Committee shall start functioning immediately and decide the pending cases at the earliest possible time and communicate the same to the concerned parties.
- (iii) The Committee shall consider all the required details of Agama, Samitha structural stability, historical aspects and archaeological nature for approving the works proposed.
- (iv) All the members shall co-operate and co-ordinate among themselves and with the HR&CE Department, for smooth and effective functioning of the Committee.
- (v) The Committee meetings shall not be postponed unnecessarily and the cases shall be taken up on the basis of their nature and urgency.
- (vi) In the unavoidable circumstances, the opinion of two Agama Experts out of four (one from Saiva Agama Expert and another from Vaishnava Agama Expert) is sufficient for disposal of the cases, where the opinion of the Agama Experts is essential.
- (vii) The members shall have necessary consultation/cross check with the religious scriptures before expressing any opinion in respect of every temple along with the details relating to the petitioning temples.
- (viii) A detailed questionnaire, to be filled up by the petitioning temples, shall be placed before the Expert Committee well in advance before the day fixed for meetings for deliberations, so that the 'Agama perspective' can be considered.
- (ix) The participation of the stakeholders / representative of the petitioning temples, if required, shall be decided by the Committee.
- (x) The HR&CE Department shall take care of the transport facilities to the members of the Committee.
- (xi) While taking decision, the Committee shall ensure the protection and preservation of the monuments and ancient temples and their heritage and make proper deliberation in this regard.
- (xii) The decision of the Committee shall be final and binding on the parties.
- (xiii) If there is any grievance, it is always open to the members of the Committee / HR&CE Department to approach this Court

However, this order is subject to the final order to be passed in the main writ petition in W.P. No. 574 of 2015.

In fine, both the Miscellaneous Petitions are disposed of in terms of paras 15 and 16 above.

-sd/-
04/12/2020

THIS PETITION HAVING BEEN POSTED ON THIS 22ND DECEMBER 2020 FOR BEING MENTIONED IN PURSUANCE TO THE ORDER OF THIS COURT DATED 04.12.2020 AND MADE HEREIN, IN THE PRESENCE OF THE AFORESAID ADVOCATES THE COURT MADE THE FOLLOWING ORDER.

Today, these Miscellaneous Petitions were listed under the caption "for being mentioned" at the instance of the learned Special Government Pleader appearing for the petitioner.

2.The learned Special Government Pleader (HR&CE) submitted that this Court, vide order dated 04.12.2020, disposed of the aforesaid Miscellaneous Petitions, by reconstituting the Expert Committee. According to him, at the time of filing the petitions, the Archaeological Expert Tmt.Maheswari was working as Superintending Archaeologist and she has now, been promoted as Regional Director (South). Hence, he sought for modification of the order dated 04.12.2020 passed by this Court by reflecting the present designation of the Archaeological Expert. A memo dated 16.12.2020 has also been filed to that effect.

3.The learned counsel appearing for the respondents has no serious objection for modifying the order dated 04.12.2020 passed by this Court, to that effect.

4.In view of the submission so made by the learned Special Government Pleader appearing for the petitioner, which has not been seriously resisted by the learned counsel appearing for the respondents, this Court is inclined to modify Sl.No.(ii) at paragraph no.15 of the order dated 04.12.2020 passed in the aforesaid Miscellaneous Petitions, as regards the designation of the Archaeological Expert Tmt.Maheswari, as '**Regional Director (South)**', instead of 'Superintending Archaeologist'. In respect of other aspects, the order remains unaltered.

5.Registry is directed to carry out the necessary correction and issue a copy of the order to all the parties.

-sd/-
22/12/2020
/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE DIRECTOR,
ARCHAEOLOGICAL SURVEY OF INDIA,
JANPAT,
NEW DELHI-110004.

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ARCHAEOLOGIST, CHENNAI CIRCLE,
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C.C. to THE SPECIAL GOVERNMENT PLEADER (HR & CE) SR.NO.5966

सत्यमेव जयते

Order
in

WMP.NOS.16006 of 2018 AND 13991 OF 2020

IN WP.NO.574 OF 2015

Date :04/12/2020

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
UM (23.12.2020)