

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.02.2021

Delivered on : 05.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.4206 of 2021

and

WMP Nos.4801 to 4803 of 2021

D.Senthilkumar

... Petitioner

..vs..

1. State of Tamil Nadu,
Rep. by the Secretary to Government,
Tamil Development, Religious Endowments
and Information Department, Secretariat,
Fort St. George, Chennai - 600 009.
2. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.
3. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.
4. The Thakkar/Deputy Commissioner/
Executive Officer,
Arulmigu Arunachaleswarar Tirukoil,
Tiruvannamalai - 606 601.

...

Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the fourth respondent comprised in his Employment Notification in Na.Ka.No.1312/2020/A2 dated 20.02.2021 issued by the fourth respondent as published in Dinamalar dated 21.01.2021 in respect of appointment of archakas and other posts in Arulmigu Sri Arunachaleswarar Tirukoil, Tiruvannamalai and quash the same as arbitrary, unconstitutional and violative of Articles 25 and 26 of the Constitution and consequently forbear the respondents, their officers, employees, servants, agents, committees or any other person(s) acting or claiming under the respondents from in

any manner appointing any person(s) as archaka in Arulmigu Sri Arunachaleswarar Tirukoil, Tiruvannamalai, contrary to the established religious custom and usage.

For Petitioner : Mr.Prahalad Bhat
for Mr.R.Parthasarathy

For R1 to R3 : Mr.M.Karthikeyan, SGP(HR& CE)

ORDER

Calling in question the employment notification in Na.Ka.No.1312/2020/A2 dated 20.02.2021 issued by the fourth respondent, which was published in Dinamalar on 21.01.2021, in respect of appointment of Archakas and other posts in Arulmighu Arunachaleswarar Thirukoil, Tiruvannamalai, the present writ petition came to be filed by the petitioner. A mandamus has also been sought to the respondents forbearing them from in any manner appointing any person(s) as Archakas in the said temple, contrary to the religious custom of the said temple.

2.The facts leading to the filing of this writ petition, in brief, may be set out as under:

2.1 The petitioner claims that he is a Sivachariar and belongs to the family of Archakas. Arulmighu Arunachaleswarar Thirukoil, Tiruvannamalai is an ancient Saivite temple and the performance of the religious rituals of the same is governed by Kamika and Karana Agamas as well the Baddhathis laid down by Agorasivachariar as early as in the 12th Century A.D., as per which, the Archakas or Gurukkals are required to acquire several qualifications, one among which is that they should belong to Adi Saivar community and they should have received initiations at 4 levels of Dheekshas viz., Samaya Dheeksha, Vishesha Dheeksha, Nirvana Dheeksha and Acharya Abhisheka Dheeksha.

2.2 According to the petitioner, as per the custom of the subject temple, which has been in vogue for a period dating back prior to 1900, only the persons hailing from two groups viz., Periya Gurukkal Vagaiyara and Chinna Gurukkal Vagaiyara, have the sole right to perform the duties of Archakas, Mirasdars, Sthanigam, Parisaragam, etc. in respect of the subject temple.

2.3 It is the further case of the petitioner that in 1920, there arose a dispute between the two groups of Archakas of the subject temple, which led to filing of a civil suit before the District Munsif, Tiruvannamalai, which was partly allowed by judgment and decree dated 22.12.1922. Challenging the same, AS.No.42 of 1924 was filed before the Sub Court, Vellore, wherein, the right of the plaintiff Archaka was affirmed by the Appellate Court.

2.4 While so, the fourth respondent issued the impugned advertisement inviting applications for various posts including the posts of Paricharagam, Archakar, Sthanigam and Meikaval in the subject temple, prescribing certain qualifications, which are in disregard to the custom and usage of the subject temple, as guaranteed under Articles 25 and 26 of the Constitution of India. Hence, this writ petition.

3.The learned counsel for the petitioner vehemently contended that the impugned advertisement inviting applications from the persons, who are otherwise not qualified to enter the sanctum sanctorum of the subject temple and perform the rituals as Archakas, would defile the image and cause damage to the religious rights of the entire Saivite community. According to the learned counsel, the appointment of the posts in question has to be as per the Agamas governing the subject temple and any deviation from the said custom and usage would be an infringement of the freedom of religion as envisaged under Articles 25 and 26 of the Constitution of India. It is also contended that contrary to the dictum laid down by the Supreme Court in His Holiness Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami v. State of Tamil Nadu [AIR 1972 SC 1586] as well Section 28 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the fourth respondent issued the impugned advertisement, prescribing the qualifications that makes serious inroads into the freedom and belief of Saivites and hence, the same will have to be quashed.

4.On the other hand, the learned Special Government Pleader (HR&CE) appearing for the respondent authorities submitted that the petitioner has no locus standi to file this writ petition, as he did not make any application pursuant to the advertisement impugned herein; the last date for submission of the applications was already over; and nearly 322 applications were received. Adding further, he submitted that the petitioner did not produce any document to show his competency nor furnished any Agama details with respect to the subject temple and hence, he cannot plead to monopolise the affairs of the subject temple as the same is against the dictum laid down by the Supreme Court in Adhi Saiva Sivachariyargal Nala Sangam v. State of Tamil Nadu [2016 (2) SCC 725]. It is also submitted that in the Kamika Agama, which provides the procedure to be followed in performing the pooja in a Saivite temple, there is no discussion related to the line of hereditary as claimed by the petitioner. He further submitted that even the issue raised in the civil suit referred to by the petitioner was only between the two group of Archakas with respect to private affairs and the same would not bind on the respondent authorities. He ultimately submitted that the Fit person appointed by the HR&CE Department is actively functioning in the subject temple and the advertisement impugned herein

issued is a continuance one and hence, the writ petition is liable to be dismissed.

5.This Court considered the rival submissions and perused the materials brought on record.

6.In this writ petition, the petitioner challenges the advertisement issued by the fourth respondent inviting applications to the posts of Archaka, Sthanikam, Paricharagam, Parivaragam and Meikaval in respect of the subject temple, which is a preliminary stage of the selection process. It is well settled that the Government cannot interfere in matters of religious affairs of a religious denomination and deny the right to manage the religious affairs and administer the properties of the religious institutions, subject to public order, morality and health. However, the relief sought herein cannot be entertained, as the petitioner, who not even made an application to the posts in question and the last date for applying the same was already over, is admittedly, a third party to the impugned advertisement. Further, no concrete materials other than the copy of the advertisement published in the Tamil daily, were filed by the petitioner alongwith this writ petition, so as to substantiate his claim. Hence, he has no locus standi to file this writ petition.

7.In this context, it is relevant to extract the principles on which a writ of mandamus can be issued, as stated in the Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr., which have been noted in the decision of the Supreme Court in *Oriental Bank of Commerce v. Sunder Lal Jain* [(2008) 2 SCC 280], which run thus:

"Note 187-- Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192 --Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform

such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and Tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196-- Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the Court, subject always to the well-settled principles which have been established by the Courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and Judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the Court may, and should, look to the larger public interest which may be concerned - an interest which private litigants are apt to overlook when striving for private ends. The Court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206-- The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action."

Applying the aforesaid principles, the grounds raised by the petitioner cannot be considered and therefore, the same deserve to be rejected.

8. At this juncture, the learned counsel for the petitioner submitted that though the petitioner stated in the affidavit filed in support of this writ petition that the qualification for a saivite to enter the sanctum sanctorum to touch the idol and to perform poojas and other rituals are strictly regulated by Kamika and Karana Agamas; and in terms of the said Agamas, only those saivites belonging to Kasyapa and Athreya Gothras are qualified to become Archakas in the subject temple, he is not pressing the averments made by the petitioner with respect to

ancestral / hereditary right for performing pooja in the subject temple and expressing no objection for proceeding with the selection process, in accordance with the Agamic knowledge and customary practice. He has also made an endorsement in the bundle to that effect.

9. In reply, the learned Special Government Pleader appearing for the respondents fairly submitted that the appointments would be made from the eligible candidates conversant with the Agamic knowledge and customary practice connected to Arulmighu Arunachaleswarar Temple.

10. The submissions so made by the learned counsel on either side are recorded.

11. It may not be out of place to point out the observation of the Supreme Court in *Seshammal v. State of Tamil Nadu* [(1972) 2 SCC 11] to the effect that "the trustee is not bound to make the appointment on the sole ground that the candidate is the next-in-line of succession to the last holder of Office".

12. The said view was further clarified by the Supreme Court in the subsequent decision in *Adhi Saiva Sivachariyargal Nala Sangam v. State of Tamil Nadu* [2016 (2) SCC 725] to the effect that "any person, who is a Hindu and possessing the requisite qualification and training, can be opted as an Archaka in Hindu Temples". Thus, the legal position is that without following the hereditary order, the appointment of Archakas should be in accordance with the religious usages and practices of the temples.

13. In such perspective of the matter, this writ petition stands disposed of, directing the respondents to proceed with the selection process for the posts in question, in respect of Arulmighu Arunachaleswarar Temple, strictly in accordance with the customary practice of the temple as well the dictum laid down by the Supreme Court in the decisions cited supra. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Tamil Development, Religious Endowments
and Information Department, Secretariat,
Fort St. George, Chennai - 600 009.

2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.

3. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Salai,
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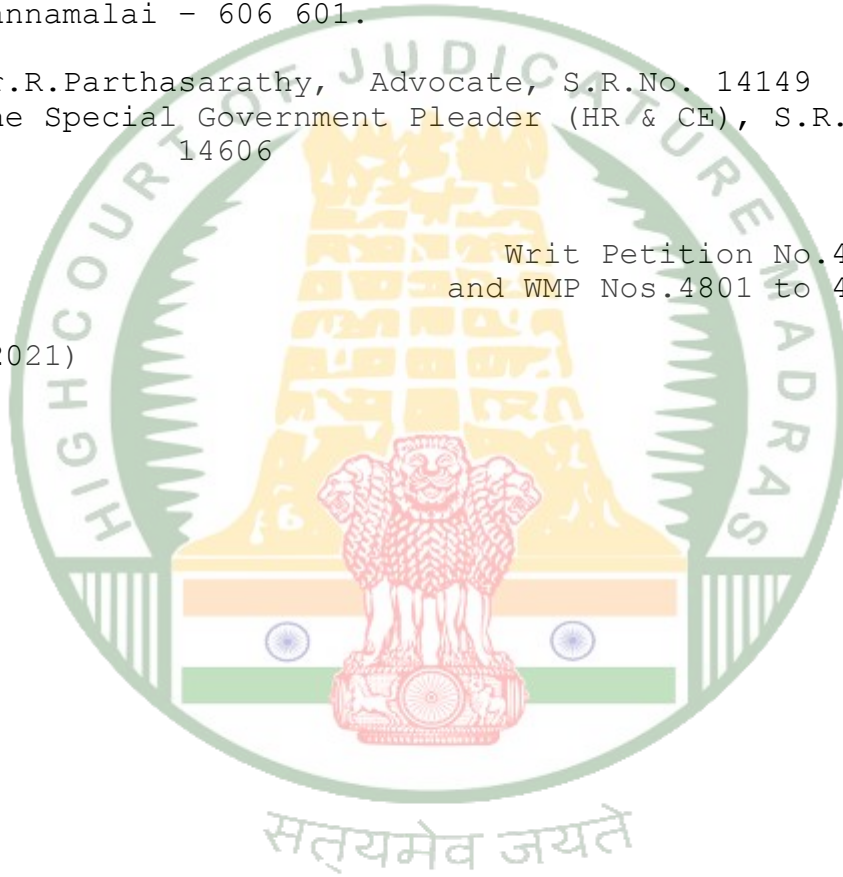
4. The Thakkar/Deputy Commissioner/
Executive Officer, Arulmigu Arunachaleswarar Tirukoil,
Tiruvannamalai - 606 601.

+1cc to Mr.R.Parthasarathy, Advocate, S.R.No. 14149

+2cc to the Special Government Pleader (HR & CE), S.R.No. 12524,
14606

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