



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Twelfth day of November Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE M.DHANDAPANI

WMP.Nos.25514 and 25516 of 2021

IN WP.No.24181 of 2021

D.GUBENDRAGUNABALAN

[PETITIONER IN BOTH THE PETITIONS]

Vs

1 STATE OF TAMIL NADU, [RESPONDENTS IN BOTH THE PETITIONS]
REP BY PRINCIPAL SECRETARY,
BACKWARD CLASSES, MOST BACKWARD CLASSES
AND MINORITIES WELFARE (BC3) DEPARTMENT,
FORT ST. GEORGE, CHENNAI - 600 009.

2 TAMIL NADU VANNIYAKULA KSHATRIYA
PUBLIC CHARITABLE TRUSTS AND
ENDOWMENTS BOARD, REP BY ITS CHAIRPERSON,
CHENNAI - 600 008.

3 THE CHAIRMAN,
P.T.LEE CHENGALVARAYA NAICKER TRUST,
2-3, E.V.K SAMPATH SALAI, VEPERY, CHENNAI - 7.

4 BOARD OF TRUSTEES,
P.T.LEE CHENGALVARAYA NAICKER TRUST,
REP BY SECRETARY, 2-3, E.V.K SAMPATH SALAI,
VEPERY, CHENNAI - 7.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant an order of Interim Injunction restraining the respondents 1 and 2 herein from filling up the vacancy caused by the removal of the petitioner from the post of the trusteeship of P.T.Lee Chengalvaraya Naicker Trust (in WMP.No.25514 of 2021) pending disposal of the WP.No.24181 of 2021 and;

ii) to stay the operation of the order of the 1st respondent in G. O. (2D) No. 21 dated 29.10.2021, Backward Classes, Most Backward Classes and Minorities Welfare (BC3) Department (in WMP.No.25516 of 2021) pending disposal of the WP.No.24181 of 2021.



Order : This petitions coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.A.MUTHUKUMAR, Advocate for the petitioner in both the petitions and of MR.R.SHANMUGASUNDARAM, ADVOCATE GENERAL assisted by MR.M.R.GOKULKRISHNAN, GOVERNMENT ADVOCATE on behalf of the 1st Respondent and of MR.GNANASEKAR, Advocate for the 2nd Respondent and of M/S.M.R.JOTHIMANIAN, Advocate for the 3rd Respondent and of MR.P.KUMARESAN, ADDITIONAL ADVOCATE GENERAL II for the Respondent in both the petitions, the court made the following order:-

Challenging the order removal of the petitioner from the Trusteeship of P.T.Lee Chengalvaraya Naicker Trust invoking the provisions of Section 64 of the Tamil Nadu Vanniyakula Kshatriya Public Charitable Trusts & Endowments (Protection and Maintenance) Act, 2018, (for short 'the Act') in consultation with the Tamil Nadu Vanniyakula Kshatriya Public Charitable Trusts & Endowments Board, the present writ petition has been filed along with the present miscellaneous petition seeking an order of interim stay.

2. Learned counsel appearing for the petitioner submits that Section 58 (3) of the Act mandates issuance of a notice and opportunity of hearing to the aggrieved trustee before terminating the person from the trusteeship. It is the further submission of the learned counsel for the petitioner that any order passed by the Government u/s 64 of the Act should be in consonance with Section 58 of the Act as Section 64 mandates a consultation with the Board and the Board, without an enquiry cannot give any opinion to the Government and, therefore, notice is mandatory and, therefore, the order passed in removing the petitioner from trusteeship is wholly unsustainable and, therefore, the present petitions have been filed seeking stay of the said order.

3. Per contra, learned Advocate General assisted by the learned Government Advocate appearing for the 1st respondent submitted that the Government is clothed with the powers to exercise Superintendence over the deed of trust or endowment and for exercising such powers, with regard to appointment or removal of a trustee or administrator, no notice is required to be given to the said trustee and the requirement of consultation with the Board alone is required and, therefore, equating the power of the Board u/s 58 with the power of the Government u/s 64 is wholly erroneous as the power of the Government is superintendence over the whole affairs of the Trust, whereas the power of the Board does not take within its fold the aspect of superintendence, but it only relates to managing the affairs of the Trust. Therefore, the plea of stay of the impugned order is liable to be dismissed.



4. This Court gave its anxious considerations to the submissions advanced on either side and also perused the materials available on record.

5. The fact that the petitioner has been removed from the trusteeship is not in dispute. However, the ground of attack with regard to the said removal is that no opportunity or notice was given to the petitioner before removing him from the post of trustee and to substantiate the said contention aid is taken of Section 58 of the Act. For better appreciation of the issue, Section 58 of the Act is quoted hereunder :-

"58. Removal of Trustee and Administrator -

(1) Notwithstanding anything contained in any other law or the deed of trust or endowment, the Board may remove a trustee or administrator from his office if such trustee or administrator-

(a) has been convicted for an offence punishable under section 56; or

(b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

(c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a trustee; or

(d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations,
or is addicted to the taking of any narcotic drugs;
or

(f) is employed as a paid legal practitioner on behalf of, or against, the trust or endowment; or

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 39; or



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(h) is interested, directly or indirectly, in a subsisting lease in respect of the property of the trust or endowment, or in any contract made with, or any work being done for the trust or endowment, or is in arrears in respect of any sum due by him to such trust or endowment; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the trust or endowment, or in respect of any money or property of trust or endowment; or

(j) willfully and persistently disobeys the lawful orders made by the Government, Board under any provision of this Act or rule or order made thereunder; or

(k) misappropriates or fraudulently deals with the property of the trust or endowment.

(2) The removal of a person from the office of the trustee shall not affect his personal rights, if any, in respect of the property of the trust or endowment either as a beneficiary or in any other capacity.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-third of the members of the Board.

(4) A trustee, who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Court and the decision of the Court on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any administrator or trustee, the Board may, if it is of opinion that it is necessary so to do in the interest of the trust or endowment, by an order suspend such trustee or administrator until the conclusion of the inquiry:



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Provided that no suspension for a period exceeding ten days shall be made except after giving the trustee or administrator a reasonable opportunity of being heard against the proposed action.

(6) Where any appeal is filed by the trustee to the Court under sub-section (4), the Board may make an application to the Court for the appointment of a receiver to manage the trust or endowment, pending the decision of the appeal, and where such an application is made, the Court shall, notwithstanding anything contained in the Code of Civil procedure, 1908, appoint a suitable person as receiver to manage the trust or endowment, and direct the receiver so appointed to ensure that the customary rights of the trustee and of the trust or endowment, are safeguarded.

(7) Where a trustee or administrator has been removed from his office under sub-section (1), the Board may, by order, direct the trustee or administrator to deliver possession of the property of trust or endowment, to the Board or any officer duly authorized in this behalf or to any person or committee appointed to act as the trustee of the trust or administrator of the endowment.

(8) A trustee or administrator of a trust or endowment removed from his office under this section shall not be eligible for re-appointment as a trustee of the trust or administrator of an endowment, for a period of five years from the date of such removal."

6. Section 58 of the act prescribes the manner in which a Trustee is to be removed by the Board and the circumstances under which such action can be taken by the Board. This Court is not concerned with the said provision for the reason that the removal of the petitioner is by the Government through the impugned order.

7. In the said backdrop, the present action of the respondent/Government being by invocation of Section 64 of the Act, according to the respondents, the said invocation of the power is an exercise of superintendence by the Government while passing order exercising such superintendence, no notice or opportunity need be granted to the trustee, viz., the petitioner herein, as consultation with the Board would be suffice for exercising the power by the Government provided u/s 64 of the Act.



8. Since the issue revolves around the power of the Government to take action without issuing notice, as submitted by the learned Advocate General, for better appreciation, Section 64 of the Act is quoted hereunder :-

"64. Where a deed of trust or endowment, or any decree or order of a Court or any scheme of management of any trust or endowment provides that a Court or any authority other than a Board may appoint or remove a trustee or administrator or settle or modify such scheme of management or otherwise exercise superintendence over trust or endowment, then, notwithstanding anything contained in such deed of trust or endowment, decree, order or scheme, such powers aforesaid shall be exercisable by the Government:

Provided that where a Board has been established, the Government shall consult the Board before exercising such powers."

9. A perusal of Section 64 of the Act clearly reveals that the powers exercisable by a Court of competent jurisdiction in relation to appointment and removal of a trustee, is well exercisable by the Government, which has control and superintendence over the affairs of the trust and the only embargo placed on the Government is that in case of a Board being in place, consultation with the Board is made a condition before passing any order of removing a trustee.

10. In the case on hand, the ground on which stay of the impugned order is sought for is that no opportunity or notice was given to the petitioner before the order removing him from the post of trustee has been passed. In view of the fact that opportunity or notice having not been mandated u/s 64 of the Act under which the said impugned order has been passed, the plea of the petitioner for stay of the said impugned order cannot be sustained.

11. For the reason aforesaid, this Court is of the considered view that no prima facie case exists for grant of stay as sought for by the petitioner. Accordingly, both the miscellaneous petitions are dismissed.

-sd/-

12/11/2021

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



TO

THE PRINCIPAL SECRETARY,
STATE OF TAMIL NADU, BACKWARD CLASSES,
MOST BACKWARD CLASSES AND MINORITIES
WELFARE (BC3) DEPARTMENT, FORT ST. GEORGE,
CHENNAI - 600 009.

+2 C.C. to MR.A.MUTHUKUMAR, Advocate SR.NO.6542 & 6543/2021

+2 C.C. to MR.M.GNANASEKAR, Advocate SR.NO.6583 & 6584/2021

C.C. to M/S.M.R.JOTHIMANIAN, Advocate SR.NO.6595/2021

Order

in

WMP.Nos.25514 and 25516 of 2021

IN WP.No.24181 of 2021

Date :12/11/2021

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