



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:24.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.A. (MD)No.1570 of 2021

AND

C.M.P. (MD) .No.6551 of 2021

WEB COPY

Kathiresan Poosari

... Appellant/Writ Petitioner

Vs.

- 1.The Government of Tamilnadu
Represented by its Principal Secretary,
Tourism, Culture and Religious
Endowments (RE3-1) Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner,
Hindu Religious & Charitable Endowments Board,
Nungambakkam, Chennai - 600 034.
- 3.The Joint Commissioner,
Hindu Religious & Charitable Endowments Board,
Sivagangai,
Sivagangai District.
- 4.The Executive Officer/Assistant Commissioner,
Arulmighu Irukkangudi Mariamman Temple,
Irukkangudi Post, Sattur Taluk,
Virudhunagar District.
- 5.S.R.M.Ramamoorthy
- 6.S.A.Rajendran Poosari
- 7.R.Soundarrajan Poosari
- 8.S.Marimuthu
- 9.R.Maharajan Poosari
- 10.M.Navarathinam

... Respondents

PRAYER: Appeal filed under clause 15 of the Letters Patent seeking to set aside the order dated 30.04.2021 passed in W.P.(MD).No.7676 of 2018 and allow the appeal.

Prayer in WP(MD)No.7676 of 2018:

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Letter No.14425/RE-3-1/2016-5, dated 21.03.2018 passed by the 1st



respondent, quash the same and further directing the 1st respondent to take action against the 5th respondent Hereditary Trustee under Section 53(2) of the HR & CE Act forthwith.

For Appellant : Mr. M.Venkateseshan
For Respondents : Mr. P. Thilak Kumar
Government Advocate,
for R1 to R3
Mr. V.R. Shanmuganathan
for R4
Mr. N. Dilip Kumar
for R5

JUDGMENT

[Judgment of the Court was made by The Hon'ble CHIEF JUSTICE]

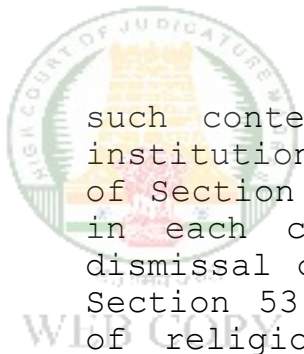
The appeal is directed against an order dated April 30, 2021, by which the writ petitioner's grievance against the manner of conduct of an inquiry has been repelled and the writ petition dismissed.

2.This is the second round of proceedings. On an earlier occasion, the writ petitioner had approached this Court with allegations of wrongdoing against one or more of the private respondents herein. Such earlier petition was disposed of by an order dated August 21, 2017, by directing the Secretary to the Government, Hindu Religious and Charitable Endowments Department to consider the claim of the petitioner in the light of a representation made by the petitioner on July 26, 2016 and to pass an appropriate order on merits in accordance with law. The operative part of the order dated August 21, 2017 referred, inter alia, to Section 53(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

3.The relevant provision indicates who the appropriate authority would be for the purpose of exercising the power to suspend, remove or dismiss trustees.

4.Though the order dated August 21, 2017 required the Secretary to consider the petitioner's representation, the Secretary has called upon the Commissioner of the Hindu Religious and Charitable Endowments Department to conduct a detailed inquiry on the allegations levelled against the trustees after providing a fair and equal opportunity to all persons concerned and forward a report.

5.The primary contention of the petitioner before the writ court in the second round of the proceedings was that since it was the Secretary to the Government who was the appropriate authority in terms of Section 53(1)(a) of the said Act, such Secretary could not have delegated his power to the Commissioner. It may be noticed in



such context that there is a distinction made between religious institutions listed under clause (i), clause (ii) and clause (iii) of Section 46 of the Act and who the appropriate authority would be in each case to exercise the power of suspension, removal or dismissal of trustees of the relevant religious institutions. Thus, Section 53(1)(a) provides for the appropriate authority in respect of religious institutions included in the list published under Section 46(iii) to be the Government; in respect of religious institutions included in the list published under Section 46(ii), the appropriate authority would be the Commissioner; and, in respect of religious institutions included in the list published under Section 46(i), it would be the Joint or the Deputy Commissioner.

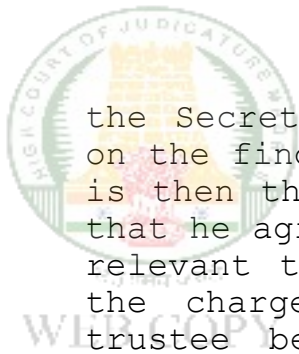
6. Section 53(1) of the Act, in its appropriate interpretation, authorises classes of persons who may exercise the power to suspend, remove or dismiss trustees depending on the classification of the religious institutions with which such trustees are associated. Thus, a Commissioner may not suspend or remove or dismiss any trustee of any religious institution included in the list published under Section 46(iii) of the Act; just as an Assistant Commissioner may not suspend or remove or dismiss any trustee in any of the three lists published under Section 46 of the said Act.

7. There is a distinction between who may suspend, remove or dismiss a trustee and who may be involved in the process culminating in the suspension or removal or dismissal of trustees. Just as a disciplinary authority in service jurisprudence would not take upon the burden of conducting the fact-finding inquiry and appoint an inquiry officer in such regard, it is perfectly in order for an appropriate authority within the meaning of the relevant expression in Section 53(1) of the Act to entrust the fact-finding exercise to some other as long as the decision on the report rendered upon the fact-finding exercise being completed is undertaken by the appropriate authority himself.

8. In this case, the Secretary is the appropriate authority. There is no dispute in such regard. Indeed, it was the Secretary who was directed by the order dated August 21, 2017 to take appropriate action.

9. While the Secretary considered the matter, he deemed it necessary for a more elaborate fact-finding exercise to be undertaken. Accordingly, he appointed a Commissioner in this case to inquire into the matter; just as in disciplinary proceedings in service jurisprudence the disciplinary authority has the power to engage some other official as the inquiry officer and require the inquiry report to be presented before the disciplinary authority.

10. The relevant order passed by the Secretary has been noticed hereinabove. It provides for the inquiry report to be furnished. It is a service proceeding and it is a fact that such inquiry report will be furnished before



the Secretary, whereupon the Secretary, will decide whether, based on the findings in the inquiry report, any action is called for. It is then that the Secretary may forward the findings of the inquiry that he agrees with, if they find any fault with any trustee, to the relevant trustee for an explanation to be furnished in respect of the charges. The ultimate consideration upon the reply of the trustee being received will be that of the Secretary, who is undoubtedly the appropriate authority in this case.

11. There is no merit in the appellant's assertion that the mere appointment of an inquiry officer amounts to delegation of the authority required to be exercised by the appropriate authority as defined in Section 53(1) of the Act. There is no infirmity in the order impugned dated April 30, 2021, as it appropriately held that an inquiry could, in such circumstances, be directed to be conducted by some other official.

12. It is hoped that the inquiry is now conducted and completed as expeditiously as possible and the report furnished to the Secretary for appropriate action in accordance with law.

13. W.A. (MD) No. 1570 of 2021 is dismissed.

There will be no order as to costs. Consequently, C.M.P. (MD) No. 6551 of 2021 is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar (CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal Secretary,
Government of Tamil Nadu,
Tourism, Culture and Religious
Endowments (RE3-1) Department,
Secretariat, Chennai-600 009.



2.The Commissioner,
Hindu Religious & Charitable Endowments Board,
Nungambakkam, Chennai - 600 034.

3.The Joint Commissioner,
Hindu Religious & Charitable Endowments Board,
Sivagangai,
Sivagangai District.

4.The Executive Officer/Assistant Commissioner,
Arulmighu Irukkangudi Mariamman Temple,
Irukkangudi Post, Sattur Taluk,
Virudhunagar District.

+2 CC to M/s.M.V.VENKATESESHAN, Advocate (SR-27067[F] dated
24/08/2021)

+1 CC to M/s.S.MANIKANDAN, Advocate (SR-27107[F] dated 24/08/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-27111[F] dated 24/08/2021)

+1 CC to M/s.The Special Government Pleader (SR-27207[F] dated
25/08/2021)

W.A. (MD) No. 1570 of 2021
24.08.2021

_RS (02.09.2021) 5P 10C