



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P (MD)No.20163 of 2021

and

W.M.P (MD)Nos.16863 and 16864 of 2021

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T.Balaji Krishnaswamy

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Chief Secretary,
Fort St. George,
Chennai.

2.State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Tourism, Culture and Religious,
Endowment,
Chennai.

3.The Commissioner,
Hindu Religious & Charitable Endowment Department,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the third respondents to give effect to Section 25-A(d) of the HR and CE Act by receiving affidavits from individual persons who seek to be appointed as trustees for public temples and upload the same into the website as contemplated under Section 4(2) of the Right to Information Act, 2005.

For Petitioner : Mr.K.P.S.Palanivel Rajan

For Respondents : Mr.R.Shanmugasundaram,
Advocate General, Assisted by
Mr.P.Subbaraj,
Government Advocate

ORDER

(Order of the Court was made by PUSHPA SATHYANARAYANA, J.)

The Public Interest Litigation is filed by a practising Advocate of this Court, seeking a direction to the third respondents to give effect to Section 25-A(d) of the Tamil Nadu

<https://hcservices.mv.in/hcservices>



Hindu Religious and Charitable Endowments Act, 1959, by receiving affidavits from individual persons, who seek to be appointed as Trustees for public temples and upload the same into the website as contemplated under Section 4(2) of the Right to Information Act, 2005.

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2. As per Section 7 and 7(A) of the HR & CE Act, which is amended in the year 1996, an Advisory Committee and District Committee were sought to be constituted to receive applications from persons, who intend to be considered for appointment as Trustees by the Advisory Board constituted under Section 7 of the Act. Section 26 of the HR & CE Act, prescribes a condition for a person to be considered as a Trustee. The appointment of Trustees for the purpose of administration of temple is to prevent malpractice in the administration.

3. Section 25-A of the HR & CE Act, reads as follows:

"25-A. Qualifications of trustees: A person shall be qualified for being appointed as, and for being, a trustee of any religious institution or endowment -

(a)if he has faith in God;

(b)if he possesses good conduct and reputation and commands respect in the locality in which the religious institution or endowment is situated;

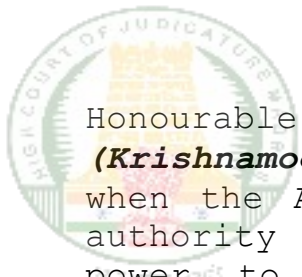
(c)if he has sufficient time and interest to attend to the affairs of the religious institution or endowment; and

(d)if he possesses such other merit incidental thereto."

4. As mentioned supra, Section 26 of the HR & CE Act, prescribes disqualification of Trustees. Pursuant to the orders of this Court, the third respondent in his proceedings in Na.Ka.No.63051/2018/11 dated 05.08.2021, has called for application from individuals, who aspire to be appointed as Trustee for the temple falling under Section 46 of the Act.

5. The grievance of the petitioner is that the above proceedings had failed to give effect to the intention of the legislature under Section 25A(d) of the Act.

6. Mr. K. P. S. Palanivel Rajan, the learned counsel appearing for the petitioner argued that the Courts have powers to issue directions to fill up the vacuum in the Act or the Rule and invited the attention of this Court to the decision of the



Honourable Supreme Court reported in **(2015) 3 SCC 467 (Krishnamoorthy vs. Sivakumar)**, wherein it is stated that in case when the Act or Rule is silent on a particular subject and the authority implementing the same, has constitutional or statutory power to implement it. The Courts can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted.

7. The learned counsel further stated that the Selection Committee as well as the Public, have a right to know critical information about the aspirants to be appointed as Trustees, who would be entrusted with the management of the property belonging to various temples.

8. Section 4(2) of the Right to Information Act, 2005, reads as follows:

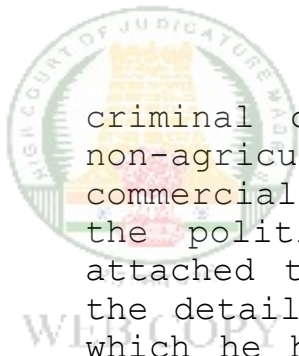
(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

9.A conjoint reading of Section 25-A(d) of HR & CE Act and Section 4(2) of the RTI Act, makes it mandatory that the Selection Committee should make a decision on the strength of the relevant materials placed before it.

10. The learned counsel for the petitioner expressed that Section 25-A(d) of the Act, is not followed which would be in contravention of the mandate of the Act. In other words, he has stated that all the relevant information including the antecedents of the Trustees sought to be appointed should be placed before this Selection Committee and published in the paper to be made known to the public. If the same is not done, it will vitiate the selection process.

11. It is pointedly argued that the respondents have not given effect to the provision of Section 25-A(d) of the Act and Section 4(2) of the RTI Act.

12.Mr.R.Shanmugasundaram, learned Advocate General, assisted by Mr.P.Subbaraj, learned Government Advocate, who accepted notice on behalf of the respondents submitted that the notification issued is in consonance with the provision of law under Section 25-A(d) of the Act and the apprehension of the petitioner that application does not ask for the information about the total assets, movable, immovable, investments, bank balance, liabilities,



criminal cases pending ownership of land both agricultural and non-agricultural, ownership of buildings both residential and commercial, Educational qualification and affiliation to any of the political party, is not correct as the application form attached to the typed set of papers, itself go to show that all the details which the petitioner has sought for and those details which he has not asked for are also included to be furnished by the Prospective candidates. The application is to be filled by the aspirant Trustee and give a declaration that the details furnished are true. Therefore, it is unnecessary to insist that it should be in the form of an affidavit or the affidavit should be filed along with the application sworn before an oath Commissioner or the Registrar in this regard.

13. Heard the submissions made on either side and perused the material available on record.

14. When the notification issued and the relevant application contained all the relevant information which would be before the Selection Committee, the apprehension of the petitioner is unwarranted. So far as uploading of the application is concerned, the argument was that all the applications received by the respondents should be uploaded in the website to be available for the public view, is not possible and also not necessary as it would be appropriate to insist on the selected and appointed candidates particulars as had been furnished in the application form alone would suffice for the purpose of public scrutiny.

15. In such view of the matter, the demand of the petitioner in the name of public interest that particular format has to be followed and uploaded in the website is not justified and hence, the writ petition is dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)

pm

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.

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To:

1.The Chief Secretary,
State of Tamil Nadu,
Fort St. George,
Chennai.

2.The Principal Secretary,
State of Tamil Nadu,
Department of Tourism, Culture and Religious,
Endowment,
Chennai.

3.The Commissioner,
Hindu Religious & Charitable Endowment Department,
Chennai.

+1 CC to M/s.K.P.S. PALANIVELRAJAN, Advocate (SR-35281[F] dated 22/11/2021)

+1 CC to M/s.SPL GP (SR-35452[F] dated 23/11/2021)

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