BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **07.12.2021**
CORAM
THE HON'BLE MR. JUSTICE M.SUNDAR
W.P(MD)No.20561 of 2014
and
M.P.(MD)No.1 of 2014

K.Kumaraguruparan ... Petitioner

Vs.

1.The Joint Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowment Department,
Trivandrum Road,
Palayamkottai,
Tirunelveli District.

2.The Assistant Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowment Department,
South High Ground Road,
Palayamkottai,
Tirunelveli - 1.

3.The Fit Person (Executive Officer,
Arulmigu Kailasanathar Thirukoil),
Arulmigu Mutharamman (North) Thirukovil,
Palayamkottai,
Tirunelveli District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Se.Mu.Na.Ka.No.134/2013/E1 dated 25.11.2014 and quash the same.

For Petitioner : Mr.S.Meenakshisundaran,
Senior Counsel for
Mr.R.Manimaran

For Respondents : Mr.M.Lingadurai,
Special Govt. Pleader for R1 & R2
No Appearance for R3

O R D E R

In the captioned main writ petition, an 'order dated 25.11.2014 bearing reference செ.மு.ந.க.எண்.134/2013/E1 made by the second respondent' (hereinafter 'impugned order' for the sake of convenience and clarity) has been assailed.

2. In and by the impugned order, a Fit person has been appointed for 'Arulmigu North Mutharamman Thirukoil, Palayamkottai Town and Taluk, Tirunelveli District' (hereinafter 'said temple' for the sake of convenience and clarity). To be noted, appointment of Fit person has been made vide the impugned order under Section 49(1) of 'The Tamil Nadu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' (hereinafter 'TN HR&CE Act' for the sake of convenience and clarity) and Executive Officer of another public temple viz., Kailasanathaswamy Temple situate in Tirunelveli Junction has been appointed as Fit person.

3. In one week from now, the captioned main writ petition will be seven years old in this Court as it has been filed on 15.12.2014. On 17.12.2014, an interim order has been made in captioned WMP and the order made by Hon'ble Predecessor Judge reads as follows:

'Interim stay. Notice'

4. This Court is informed that aforementioned interim order is operating. It is also to be noted that interim stay is stay of the operation of impugned order.

5. The writ petitioner, claiming that he is Managing Trustee of said temple has filed the captioned writ petition saying that said temple is established, administered and maintained by a particular community residing in and around Palayamkottai. Before proceeding further, I need to record that there is no disputation or disagreement before me that there is no decree, declaration or order to the effect that said temple is a denominational temple. Therefore, the undisputed position is said temple even as of today is a public temple.

6. The first and second respondents represented by State Counsel have filed a counter affidavit dated 24.08.2016 and completed pleadings. The third respondent is the Fit person who has been appointed in and by the impugned order, the third respondent has been duly served but third respondent has not chosen to enter appearance through counsel, name and full / complete address of the third respondent is shown in the cause list but there is no representation. However, third respondent is only a formal party he being an appointee qua the impugned order. If the impugned order is sustained he would proceed and if it is dislodged he would not proceed qua said temple. Therefore, the absence of third respondent does not make any difference of significance to the captioned main writ petition being heard out.

7. In his campaign against the impugned order,

Mr.S.Meenakshisundaram, learned Senior Advocate appearing on behalf of the counsel on record for writ petitioner, notwithstanding very many averments in the writ affidavit and notwithstanding several grounds raised in the writ affidavit made three pointed submissions and they are as follows:

1) There is violation of NJP (Natural Justice Principles) as the writ petitioner has not been put on notice before the impugned order was made;

2) The impugned order is a non-speaking order as it does not give any reason for appointment of Fit person; and

3) Two case laws being ***Sri Devi Ellamman Paripalana Sangam Vs. The Assistant Commissioner, Hindu Religious and Charitable Endowments Board, Chennai and another*** reported in ***2010 (2) CWC 915*** and ***P.R.Thirupathy and others Vs. The Assistant Commissioner, Hindu Religious and Charitable Endowment and others*** reported in ***(2015) 4 CTC 755*** were pressed into service in support of the aforementioned two points.

8. Learned State Counsel responded to the aforementioned submissions and a summation of his response is as follows:

a) adverting to paragraph 4 of the counter affidavit it was submitted that the writ petitioner was not appointed by the 'Tamil Nadu Hindu Religious and Charitable Endowments Department' (hereinafter 'TN HR & CE Dept.') much less under the TN HR & CE Act;

b) It was also pointed out there are several allegations regarding administration of said temple including discrimination amongst worshipers and that has inter-alia been the trigger for appointment of Fit person. The powers of second respondent under Section 49(1) are transitory powers and the exercise of powers in this case cannot be found fault with as it has been done for protecting properties and interests of said temple;

c) it cannot be gainsaid that the impugned order is a non-speaking order as the reason for appointment of Fit person has been mentioned in the impugned order itself and

d) there is no NJP violation as it is only a transitory provision.

9. By way of reply, learned Senior Counsel reiterated the submissions made in the opening submission and confirmed that the

notification has now been issued (about three weeks ago) for constitution of the selection committee for appointment of Trustees for various temples situate in the territorial jurisdiction in which the said temple is situate.

10. I now proceed to consider the arguments one after the other, discuss the same and give my dispositive reasoning. I would first deal with the arguments that the impugned order is a non-speaking order. A careful perusal of the impugned order makes it clear that it has been made for the purpose of taking care of the movable, immovable properties, hundiyal metal idols of the said temple and it is also says that it is to protect the metal idols. Relevant portion of the impugned order reads as follows:

> '.............மேற்படி திருக்கோயிலின் அசையும் மற்றும் அசையா சொத்துக்கள் உண்டியல் மற்றும் உலோக விக்கிரகங்களை பாதுகாக்கவும் வரவு செலவு கணக்குகள் மற்றும் அன்றாட பணிகளை கவனித்து வரவும் இந்து சமய அறநிலையத்துறை சட்டம் 22/1959 ன்படி பிரிவு 49(1) ன் கீழ் திருநெல்வேலி சந்திப்பு அருள்மிகு கைலாசநாதசுவாமி திருக்கோயில் செயல் அலுவலரை தக்கராக நியமனம் செய்துஉத்தரவிடப்படுகிறது.'

11. Therefore, the argument that the impugned order is a non-speaking order is flattened. The impugned order does record reasons. In my considered view it is terse, epigrammatic and it is not laconic. I also make it clear that the question as to whether an order under Section 49(1) of TN HR & CE Act should be a speaking order is left open. Suffice to say that in this case the impugned order is not a non-speaking order in the light of the aforementioned portion (extracted and reproduced) of the impugned order.

12. This takes us to the next point that turns on NJP. On NJP, I deem it appropriate to deal with the two case laws, which were pressed into service. One is ***P.R.Thirupathy case***, where the facts are completely different. I am able to find at least four distinguishing features/facts. One is, as captured in paragraph 4 that was a case where non-hereditary trustee had already been appointed in accordance with TN HR&CE Act. The second point is (as captured in paragraph 15 thereat) the impugned order was never served on the writ petitioner. Third distinguishing feature is also captured in paragraph 15 and that is, the question as to whether the temple concerned therein is a denominational temple was left open. For this purpose, I deem it appropriate to extract and reproduce entire paragraph 15 of ***P.R.Thirupathy*** case law and the same reads as follows:

> *'15. It is to be further pointed out that the impugned order was not communicated to the petitioners*

and in the counter affidavit filed by the third respondent, it has been stated that the copy of the order was also sent to the person in management by post and it is not necessary to send the same to the Writ Petitioner stating that they are not trustees as claimed by them. The averment made in the counter affidavit of the third respondent is vague, as it does not state the date of despatch whether it was sent by registered post or not and other details. Therefore, the contentions of the third respondent that the copy of the order was sent to the person in management by post is held to be not substantiated. Though the third respondent takes a stand that the petitioner need not be provided with the copy, it is not known under what circumstances the signature of the petitioner and others were obtained by the fit person, when the hundial was opened on 28.10.2013. The learned Special Government Pleader appearing for the respondent submitted that though the term of office of the trustee is over, they are still continuing. In such circumstances, the petitioners ought to have been heard in the matter after issuing notice to them, since such procedure had not been followed, it has to be necessarily held that the impugned order has been passed in 17 violation of principles of natural justice. Though the petitioner would contend that the temple is a denomination temple, established and maintained by the people belonging to a particular community, the third respondent has denied the contention and submitted that the H.R.,&C.E., department has been appointing non-hereditary trustees belonging to other community to the temple from time to time and the trustees are appointed in accordance with the stipulation under Section 47 of the Act. In the light of the above stand taken by the parties, this issue cannot be adjudicated in this Writ Petition and it is for the petitioners to work out their remedies under the Act in the manner known to law.'

13. Relevant portion of paragraph 4 which deals with non-hereditary trustees reads as follows:

'4.The learned Special Government Pleader appearing for the respondents 1 to 4, by referring to the counter affidavit filed by the respondents 3 and 4 submitted that the temple is receiving financial assistance from the H.R. and C.E., Department for pooja to be performed and non-hereditary trustees were appointed to the said temple by the department from 1995 onwards and those non-hereditary trustees belong

to various communities. It is further submitted that among the five non-hereditary trustees, one trustee is a lady and one other trustee belongs to the Schedule Caste community and these appointments were made in terms of Section 47 of the Act........'

14. The fourth distinguishing feature is it is not a case where there is no disputation that there is no declaration or decree that temple concerned is a denominational temple. In other words as already alluded to supra in the case on hand, said temple is a public temple. Likewise ***Sri Devi Ellamman Paripalana Sangam case*** is also distinguishable on facts as that is a case where an application had been made for declaring that the trusteeship of the office of the temple concerned is hereditary. This is captured in paragraph 8 of that order and the relevant portion reads as follows:

> *'8..........Though there has been an application for declaration of the office of trustee of the religious institution to be a hereditary one, no application under Section 63(a) for a declaration as to whether the temple in question is a religious institution used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community or section thereof was filed......'*

15. Going by the narrative, the above may well be a petition under Section 63(b) and not 63(a). This may be a typographical error. It is not necessary to delve further into this and it will suffice to say that the two case laws are clearly distinguishable on facts. In this regard, I remind myself of the celebrated ***Padma Sundara Rao*** case being ***Padma Sundara Rao Vs. State of Tamil Nadu*** case reported in ***(2002) 3 SCC 533*** which was rendered by a Hon'ble Constitution Bench owing to which it is a declaration of law and the relevant paragraph in ***Padma Sundara Rao*** case law is paragraph 9 and the same reads as follows:

> *'**9.**Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'*

16. I have applied the celebrated ***Padma Sundara Rao*** declaration of law to distinguish the aforementioned two case laws. As the aforementioned two case laws do not apply to the case on hand it does not help the cause of the writ petitioner and it does not come to the aid of the writ petitioner in the case on hand. This by itself puts an end to the NJP argument. In my considered view, Section 49(1) of TN HR & CE Act has to necessarily be read with Section 47(1)(a) of TN HR&CE Act. A conjoint and careful reading of Section 49(1) of TN HR&CE Act read with Section 47(1)(a) more particularly second proviso to Section 47(1)(a) makes it clear that it is a transitory provision and appointment of Fit person under Section 49(1) is pending constitution of board of trustees. In the instant case, as already alluded to supra, steps in this direction have been taken by the State as a notification for constitution of the selection panel for selecting the trustees has already been made about 3 weeks ago.

17. I now deal with the argument that the writ petitioner was not appointed by TN HR&CE Department much less under TN HR&CE Act. This aspect of the matter will also govern one of the distinguishing features referred to supra viz., Section 1(3) of TN HR&CE Act read with Section 4 of TN HR&CE Act. TN HR&CE Act in its current form came into force on and from 19.11.1959 that being the date on which the Presidential assent was given to the TN HR&CE Act. Section 1 of TN HR & CE Act deals *inter alia* with the application of the Act. Sub-section (3) of Section 1 makes it clear that the entire statute applies to all public religious institutions / endowments including incorporated Dewaswoms and Unincorporated Dewaswoms. This means, on and from 19.11.1959, the Statute applies to four different categories of entities viz., a) religious institutions, b) endowments, c) incorporated Dewaswoms and d) and Unincorporated Dewaswoms. It is further to be noted that all these four terms are defined under the Statute. Religious institution is defined in Section 6(18), endowment (akin to religious endowment) is defined in Section 6(17) specific endowment which is defined in Section 6(19), incorporated Dewaswoms is defined in Section 6(12) and unincorporated Dewaswoms is defined in Section 6(23) which has to be read in conjunction with schedule II. These four provisions reads as follows:

> ***'6. Definitions.- In this Act, unless the context otherwise requires,***
>
> *(1) to (11) ....*
>
> *(12)"incorporated Devaswmos" means the Devaswoms mentioned in schedule-I*
>
> *..........*
>
> *..........*
>
> *(17).........*
>
> *(18) "Religious institution" means a math,*

temple or specific endowment and includes,:-

(19) "specific endowment" means any property, or money endowed for the performance of any f specific service or charity in a math or temple, or for the performance of any other religious charity , bust does not include an inam of the nature described in Explanation (1) to clause(17)

....

....

(22).......

(23)"unincorporated Dewaswmos" means the Dewaswoms mentioned in schedule-II'

18. The Act by way of an explanation to Section 1(3) makes it clear that under sub-Section (3) the entities which are excluded from public religious institutions and endowments are Jain religious institutions and endowments. However, even for this a separate provision viz., Section 2 of TN HR & CE Act has been made where power has been vested with the Government to extend TN HR&CE Act to Jain religious institutions and endowments also. However, with regard to the application of the Act, a given entity viz., a religious institution, endowment, incorporated Dewaswoms or unincorporated Dewaswom can be exempted from some or all the provisions of the statute only by exercise of power by the Government under Section 4 of TN HR & CE Act which deals with exemptions. In the case on hand, admittedly there is no such exemption. Therefore, the said temple is clearly a public temple. Before proceeding further, I deem it appropriate to make it clear that the definition of religious institution makes it clear that it includes math, temple and specific endowment. It may not be necessary to go to the definition of math under 6(13) or specific endowment under 6(19) as that may be outside the realm of the matter on hand. It is suffice to say that a temple is defined under Section 6(20) and the same reads as follows:

'6. Definitions.- In this Act, unless the context otherwise requires,

(1) to (19) ....

(20) "temple" means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship;'

19. Therefore, a conjoint reading of Sections 6(18) and 6(20) make it clear that a temple as defined in Section 6(20) of TN HR & CE Act will be a religious institution and therefore will come within the sweep of sub-section (3) of Section 1. In other words, temple is a religious institution and therefore, by virtue of coming under Section 1(3) that would become a public temple on and

from November of 1959, to be precise 19.11.1959 when the TN HR&CE Dept. received the Presidential assent.

20. In this view of the matter, it cannot be gainsaid by any one that a particular temple has not been brought under the sweep of the Statute. It may well be possible that in practice or in ground situation, the physical administration may not have actually been taken over by the authorities under the TN HR & CE Act but that does not alter the statutory position that a temple does come under the sweep of TN HR & CE Act. A public temple *per se* comes within the sweep of TN HR &CE Act. Therefore, one other argument which was made by referring to proceedings of Commissioner dated 17.10.2014 and furtherance of this argument that said temple was brought within the administration (MSif) of the TN HR&CE Dept., hardly holds water as it does not fit into the statutory scheme. In this regard, I also remind myself that this Court has repeatedly held in a catena of case laws that TN HR&CE Act is a self-contained code.

21. The last of the points which I may have to deal with are the allegations which have been adverted to in the counter affidavit. Other than demonstrating that there has been a trigger, it may well not be possible for the respondent to elaborate and amplify an impugned order by way of a counter affidavit. Therefore, I deem it appropriate to make it clear that I have tested the impugned order by applying the statutory scheme of TN HR & CE Act in the light of the rival contentions that have been advanced before me.

22. This discussion and dispositive reasoning leads to one inevitable sequitur and that one sequitur is writ petitioner's campaign against the impugned order fails. The further sequitur or consequence is captioned writ petition is dismissed.
Consequently, captioned WMP is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

To

1.The Joint Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowment Department,
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2.The Assistant Commissioner,
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Palayamkottai,
Tirunelveli District.

+1 CC to M/s.R.MANIMARAN, Advocate (SR-37808[F] dated 08/12/2021)

W.P(MD) No.20561 of 2014
and M.P.(MD)No.1 of 2014
07.12.2021

PS(CO)
SB(11.01.2022) 10P 5C