



Writ Petition Nos.658, 2822 and 2824 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 9/12/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition Nos.658, 2822 and 2824 of 2020

W.P.No.658 of 2020

1. M. Rangasamy
 2. P. Krishnan
 3. P. Sithirai Sekaran
- ... Petitioners

Vs

1. Arulmigu Azhiya Illangai Amman Temple
rep. By its Thakkar/Executive Officer
Koonavelampatti Pudur
Rasipuram Taluuk
Namakkal District.
 2. The Commissioner
Hindu Religious and Charitable Endowments Board
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034.
 3. The Joint Commissioner
Hindu Religious and Charitable Endowments Board
Salem 1.
 4. Muthuvelkumaran
- ... Respondents

(Impleaded vide, order, dated 29/1/2020 made
in W.M.P.No.1191 of 2020 in
W.P.No.658 of 2020 by CVKJ)



Writ Petition Nos.658, 2822 and 2824 of 2020

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the Notification of the third respondent in Na.Ka.No.11182/2019/E1 dated 20/12/2019 and quash the same.

For Petitioner	...	Mr.S.V.Karthikeyan
For respondents	...	Mr.N.R.Arun Natarajan Special Government Pleader (HR & CE) for R.R.1 to 3.
		Mr.R.Nalliyappan for R.4.

* * * * *

W.P.No.2822 of 2020

Sembuthukula Arakkattalai
rep. By its Joint Secretary
Mr.R.Ashokan
25 B Rajaji Street, Swarnapuri
Salem 4.

... Petitioner

Vs

1. The Commissioner
Hindu Religious and Charitable Endowments Board
Uthamar Gandhi Road, Nungambakkam
Chennai 600 034.
2. The Joint Commissioner
Hindu Religious and Charitable Endowments Board
Salem 1.



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3. The Thakkar/Executive Officer

Arulmighu Azhiya Illangai Amman Temple

Koonavelampatti Pudur

Rasipuram Taluk

Namakkal District.

...

Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the Notification of the third respondent in Na.Ka.No.11182/2019/E1 dated 20/12/2019 and quash the same.

For petitioner

...

Mr.R.Srinivasan

For respondents

...

Mr.N.R.R.Arun Natarajan
Special Government Pleader
(HR & CE)

* * * * *

W.P.No.2824 of 2020

Arulmighu Aliya Elangaiamman (AAYYA)

Sembuthukula Arakkattalai

rep. By its President

Mr.K.P.Natarajan

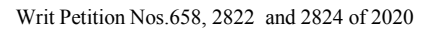
No.25 B Rajaji Street, Swarnapuri

Salem 4.

...

Petitioner

Vs



- (Impleaded vide, order, dated 9/12/2022 made in W.M.P.No.6961 of 2020 by NSKJ)

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the Notification of the third respondent in Na.Ka.No.11182/2019/E1 dated 20/12/2019 and quash the same.

For petitioner	...	Mr.R.Srinivasan
For respondents	...	Mr.N.R.R.Arun Natarajan Special Government Pleader (HR & CE)

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COMMON ORDER

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These writ petitions have been filed to quash the Notification, dated 20/12/2019 of the third respondent.

2. Brief facts leading to the disposal of these writ petitions are as follows:-

A scheme has been framed, on 17/9/1987, under Section 64 (1) of the H.R & C.E, Act, in O.A.No.36 of 1984 by the Joint Commissioner, Hindu Religious and Charitable Endowments Board, Salem, for administration of Arulmighu Azhiya Ilangai Amman Temple, Koonavelampatti Pudhur, Namakkal. As per Clause 4 (b) of the Scheme Order, number of persons to be selected from Vellala Gounder and Nattu Gounder Community Members shall be three and two, respectively and the strength ratio shall change at an alternative period and the first set of three trustees to be selected by lot. Further, the total number of trustees to be appointed is either maximum of five or minimum of three.

3. Based on the above Scheme, the Assistant Commissioner, HR & CE, Salem had appointed two persons in Vellala Gounder Community and



one person in Nattu Gounder Community, as Trustees and they were in management of the temple. On 12/10/1982, the Assistant Commissioner, HR & CE, Salem, had mistakenly passed an order and once again, appointed three persons from Vellala Gounder Community and two persons from Nattu Gounder Community, instead of two persons from Vellala Gounder Community and three persons from Nattu Gounder Community.

4. On 11/1/1996, Nattu Gounder Community members have challenged the proceedings of the Assistant Commissioner, dated 12/10/1992, in O.S.No.402 of 1992, on the file of the District Munsif Court, Rasipuram and the same was decreed. Consequently, proceedings of the Assistant Commissioner, Rasipuram, dated 12/10/1992, has been set aside.

5. Nattu Gounder Community members have filed an application before the Joint Commissioner, in O.A.No.16 of 2005, under Section 64 (5) of HR & CE Act, to modify the scheme by appointing five persons from Nattu Gounder Community and five persons from Vellala Gounder Community for one year.



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6. The second respondent, by an order, dated 23/5/2005, suo motu set aside the Scheme framed in O.A.No.36 of 1984 dated 7/9/1987 instead of passing orders on the application to modify the scheme. Aggrieved over the order of the second respondent, dated 23/5/2005, writ petition in W.P.No.27104 of 2005 has been filed. Vide, order, dated 21/1/2008, this Court had set aside the order, dated 23/5/2005 and confirmed the Scheme, dated 7/9/1987. Thereafter, on 27/4/2011, O.A.No.16 of 2005 has been withdrawn and passed an order, restoring the scheme. Repeated representations were sent to the respondents to appoint trustees, as per the Scheme, however, the respondents did not consider the same.

7. On 31/10/2018, second respondent/Joint Commissioner, instead of appointing trustees, Executive Officer has been appointed. The writ petitioners filed W.P.Nos.13398 and 213821 of 2018, challenging the proceedings of the second respondent, dated 30/10/2018, for appointment of Executive Officer and consequently, prays for a direction to implement the Scheme, dated 7/9/1987. In the said writ petitions, impleading petition has been filed on behalf of Nattu Gounder Community, wherein all the petitioners were made objections, on the order of second respondent, dated



31/10/2019, for appointment of the Executive Officer for the said temple and requested to appoint trustees, as per the Scheme.

8. On 3/7/2019, on considering the submissions made by the impleading petitioner and the writ petitioners herein, first respondent/Commissioner has set aside the order of the second respondent, dated 31/10/2019 and consequently, directed the second respondent to appoint trustees for administration of the said temple, within a period of six months. Pursuant to the above said order, on 20/12/2019, notice has been issued by the second respondent for appointment of Trustees by following the conditions imposed in the Scheme framed under O.A.No.36 of 1984.

9. Challenging the same, instant writ petitions have been filed, praying for the relief, as stated supra.

10. The learned counsel appearing for the petitioners submitted that period in which the trustees sought to be appointed relate to the year 2019, has become academic. He further submitted that though the scheme was framed in the year 1987, the same has not been notified, as per Section 65 (9) of the HR & CE, Act.



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11. Learned counsel appearing for the respondents submitted that the petitioners are beneficiaries of the scheme and they have been appointed as trustees based on the said scheme. The scheme provides for appointment of trustees on rotation basis and later, Executive Officers have been appointed. That apart, scheme was framed, in O.A.No.368/84, dated 7/9/1987 and the same was confirmed by this Court, in W.P.No.27104 of 2005 dated 21/1/2008. In paragraph Nos.6 and 7, it has been held as follows:-

"6. The scheme framed in O.A.No.36 of 1984, is not challenged before the authority. The plea is only for modification and for that application O.A.No.16 of 1995 was submitted and was pending before the Deputy Commissioner, Hindu Religious and Charitable Endowments, Salem. Such application should have been disposed of after hearing both the parties. Commissioner, unnecessarily interfered with the proceedings and set aside the entire scheme. Both the parties are prejudiced by the



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order setting aside the scheme. The Commissioner at best could have directed the Deputy Commissioner to dispose of the pending application at an early date.

7. The fact remains that scheme has been framed in O.A.No.36 of 1984 and an application No.16 of 1964 is filed for modification of the scheme. It is nobody's case that the entire scheme should be set aside. Therefore, there is no justification of the Commissioner to call for the file and set aside the entire scheme. The said order was, therefore, unwarranted. The whole proceeding is arbitrary as it has been passed without following the principles of natural justice as the parties were not heard. Therefore, the impugned order, dated 23/5/2005 is set aside. The Joint Commissioner, Hindu Religious and Charitable Endowments, Salem will hear and dispose of the application 16 of 1995 on merits after affording opportunity to both parties. The



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Joint Commissioner, Hindu Religious and Charitable Endowments, Salem shall dispose of O.A.No.16 of 1995, at an early date, preferably before June 2008. The parties are at liberty to file written memorandum for the appreciation of their claim."

12. Since both the groups have no grievance, there was no justification to call for the file and set aside the entire scheme and directed the Commissioner to decide the modification application. Hence submitted that merely because the said scheme has not been published, it will not have any effect.

13. Heard the learned counsel appearing on either side and perused the materials available on record.

14. The only point for consideration in these writ petitions is as follows:-

"Whether the respondents can act on the basis of the Scheme, which has not been notified, as required under law?"



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15. Though notice of the year 2017 is virtually has become infructuous, now the question remains to be answered is merely because the scheme has not been notified, under Section 65 (5) of the HR & CE, Act, whether the entire scheme has to be scrapped and no further action to be taken on the basis of the scheme. It is not disputed by both sides that Scheme has been framed in the year 1987 which provide for appointment of trustees of two groups viz., Vellala Gounder and Nattu Gounder. The appointment will be on the rotation basis. Pursuant to the above scheme, two persons from Vellala Gounder Community and Nattu Gounder Community were appointed in the year 1990, as trustees. Appointment made on 12/10/1982, was put under challenge, before the Civil Court, in O.S.No.402 of 1982. The suit was decreed. Thereafter, O.A.No.16 of 2005 was filed by Nattu Gounder Community to modify the scheme. When the application was pending, the second respondent, suo motu, set aside the scheme, by order, dated 23/5/2005.

16. Aggrieved over the same, writ petition has been filed on 27/4/2005. In the above writ, this Court has confirmed the scheme. Since both the groups have not disputed the scheme, directed the Commissioner to



decide the modification application pending on its file. Later, modification application also appears to have been withdrawn. Again, the scheme has been restored, pursuant to the orders of this Court. Thereafter, when notice was issued to appoint the trustees on the basis of rotation, challenge has been made.

17. It is relevant to note that K.Nallaya Gounder, from Vellala Gounder Community has filed W.P.No.13398 of 2019, challenging the order of appointment of Executive Officer and also consequent direction to implement the scheme. In the affidavit filed in support of the petition, it is averred that no dispute was raised with regard to the scheme. Another writ petition in W.P.No.13821 of 2019 has been filed by the very same petitioner/M.Rangasamy, to implement the very scheme before this Court. The above writ petition has been closed as infructuous, since the trustees have been appointed on the basis of the scheme. In the above writ petition, prayer sought by the petitioners is to challenge the Executive Officers appointment and to implement the said scheme. Thereafter, on 3/7/2019, Commissioner of H.R. & C.E., had directed the Joint Commissioner to appoint trustees, within a period of six months, and pursuant to the above, impugned order has been passed, on 20/12/2019, by the second respondent.



Affidavits filed in support of the writ petitions clearly reveal the fact that both sides have no dispute whatsoever with regard to the scheme. In fact, writ petition has been filed by them to implement the very scheme itself. Based on the scheme, trustees have been appointed. Now, the impugned order has been under challenge, on the main ground that scheme has not been notified. The very purpose of notifying the scheme is to give a public notice to the people.

18. It is relevant to note that in both groups they are aware of the scheme from the very inception and trustees were already appointed. In such a situation, now, they cannot raise any objection merely on the ground that scheme has not been notified. In such a view of the matter, this Court is not inclined to entertain these writ petitions and the same deserves dismissal.

19. Accordingly, these writ petitions are dismissed. No costs.

9/12/2022

Index : Yes / No

Internet: Yes

Speaking/non speaking order
mvs.



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To

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Hindu Religious and Charitable Endowments Board
Uthamar Gandhi Road
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Chennai 600 034.
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Hindu Religious and Charitable Endowments Board
Salem 1.



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N. SATHISH KUMAR, J

mvs.

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9/12/2022