

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.14018 of 2022

and

WMP.Nos.13269 & 13270 of 2022

Akila Indiya Koorainadu Saliyar Mahajana Sangam,
Represented by its
Secretary K.G.Palani

... Petitioner

vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai.
2. The Joint Commissioner,
Hindu religious and Chartiabale Endowments Department,
Mayiladuthurai.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Mayiladuthurai.
4. The Executive Officer,
Arulmigu Punukeeswarar Temple,
Koorainadu, Mayiladuthurai Taluk.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certioriarified Mandamus, calling for the records of impugned order of the 2nd respondent in his proceedings in Na.Ka.No.3475/2022-17/Aa1 dated 28.04.2022 and quash the same and further direct the 2nd respondent to dispose of the O.A.filed by the petitioner within a stipulated time.

For Petitioner	:	Mr.Mr.B.Jawahar
For R1 to R3	:	Mr.S.Yashvanth
		Addl.Govt.Pleader
For R4	:	Mr.M.Karthikeyan

ORDER

This writ petition has been filed by the petitioner to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the 2nd respondent in his proceedings in Na.Ka.No.3475/2022-17/Aa1 dated 28.04.2022 and quash the same and further direct the 2nd respondent to dispose of the O.A. filed by the petitioner within a stipulated time.

2. By the impugned order, the second respondent has called for the application for filling up the vacancies from among the members of the Saliyar Community from Koranadu , Mayuram Town (Mahiladuthurai) .

3. It is the specific case of the petitioner that the Scheme order was passed by the Deputy Commissioner earlier in the year 1982 pursuant to which, the petitioner filed in O.S.No.166 of 1980 to amend the O.A. under Section 64 of the HR & CE, Act. As per the scheme, the Board of trustees belong to the aforesaid community residing in and around Koranadu, Mayuram Town Taluk (presently Mayiladuthurai) only could be appointed by the competent authority. It is submitted that the technology has improved and members from the community have spread not only other parts of the Tamil Nadu but also to other parts of world and there is no impediment in appointing members belonging to the community from Koranadu (Mayiladuthurai) and therefore with effect from the petitioner filed an application on 20.07.2021 praying to modify the condition No.4 in the above scheme passed in O.A.No.66 of 1980 under Section 64(1) of the Act.

4. It is submitted that though the petitioner has filed an application under Right to Information Act and requested for furnishing of the status of the original application on 07.12.2021 wherein, it has been stated that the said O.A. is pending. Thereafter, the second respondent, Joint Commissioner H.R. & C.E. has been issued a notice dated 28.04.2022 calling for the application to fill up the Trustees to Arulmigu Punukeeswarar Temple as early as 27.05.2022. The petitioner has sent a representation dated 06.05.2022 to the second respondent and requested him not to fill up the post till the disposal of the O.A. However, the second respondent has not taken up for the aforesaid OA for amendment of Scheme decree to include the members are Saliyur Community Trustee the origin from Koranadu Saliyur. It is submitted that selections are being made from the people who are in power and therefore the impugned order is liable to be set aside.

5. Opposing the prayer, the learned counsel for first to third respondents submits that the petitioner has no locu standi to file O.A. It is submitted that in any event, O.A is

pending before the Joint Commissioner as per Section 47(3) of the HR & CE and the post of a non-hereditary trustee is only for a period of two years and since term of trustees who were appointed earlier has come to an end, impugned order/notice has been issued for following applications from the said community. It is submitted that the entire exercise in accordance with the provisions of HR & CE Act, 1959.

6. That apart, it is submitted that O.A. has to be disposed after giving notice to all the interested persons from the community. It is also submitted that the petitioner himself has filed a suit in O.S.No.148 of 2016 and another rival suit has been filed O.S.No.153 of 2017 to represent the rights of the said community before the Principal Sub Court, Mayiladuthurai. It is submitted that without notice to all the interested persons, the scheme cannot be amended merely because the petitioner has filed the petition in O.A.No.66 of 1980 dated 20.7.2021 to amend the scheme decree.

7. The learned counsel for the 4th respondent submits that O.A. was also returned for compliance and till date the petitioner has not taken any steps for complying with the same and therefore even on this count, the present writ petition is liable to be dismissed.

8. By way of a rejoinder, the learned counsel for the petitioner submits that O.A. was returned only on the 1st day of June, 2022 after notice was ordered in this writ petition and the same shall be re-presented after due compliance.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Addl. Govt. Pleader for R1 to R3 and the learned counsel for R4 and including the Executive Officer of the Arulmighu Punukeeswarar Temple Koorainadu (Mayiladuthurai Town). The second respondent has called for application for filling up the post of trustee in accordance with the procedure of Section 47 of the HR & CE. Section 47 of the H.R & C.E. Act, 1959, which reads as under:-

"(1) (a) Where a religious institution included in the list published under section 46 or in respect of which the Assistant Commissioner has no power to appoint trustees, has no hereditary trustee,-

(i) in cases falling under clause (i) of section 46, the Joint Commissioner / Deputy Commissioner ;

(ii) in cases falling under clause (ii) of section 46, the Commissioner; and

- (iii) in cases falling under clause (iii) of section 46, the Government, shall constitute a Board of Trustees.

Provided that the Board of Trustees constituted under items (i) and (ii) of the clause shall, subject to the provisions of clause

(c) consist of three persons appointed by the Joint Commissioner / Deputy Commissioner or the Commissioner, as the case may be, of whom, one shall be a member of the Scheduled Castes or Scheduled Tribes :

Provided further that in addition to the persons appointed by the Joint Commissioner / Deputy Commissioner or the Commissioner under items (i) or (ii) of this clause, as the case may be, the Government may nominate two persons who are qualified for appointments as trustees under this Act, as members of the said Board of Trustees, having regard to the following matters, namely:-

- (a) the interest of the public generally ;
- (b) the income and the properties of the religious institutions;
- (c) the number of worshippers and importance of the religious institutions as a pilgrim center ; and
- (d) such other matters as may be prescribed.]
- (b) in respect of all the incorporated and unincorporated Devaswoms in the transferred territory, the 1[Government] shall constitute a single Board of Trustees ;
- (c) every Board of Trustees constituted under clause (a) or clause (b) shall consist of not less than three and not more than five persons, of whom one shall be a member of the Scheduled Castes or Scheduled Tribes: and another one shall be a woman.

Provided that 2[the Government, the Commissioner, the Joint Commissioner or the Deputy Commissioner], as the case may be, may, pending the constitution of such Board of Trustees under this sub-section, appoint a fit person to perform the functions of the Board of Trustees.

- [(2) Where in the case of any institution include in the list published under section 46 having

a hereditary trustee or trustees, 5[the Government, the Commissioner or the Joint/Deputy Commissioner] after notice to such trustee or trustees and after such enquiry as 5[the Government, the Commissioner or the Joint/Deputy Commissioner], as the case may be, deems adequate, considers for reasons to be recorded, that the affairs of the institution are not and or not likely to be properly managed by the hereditary trustee or trustees, 5[the Government, the Commissioner or the Joint / Deputy Commissioner may, by order, appoint a non-hereditary trustee or such number of non-hereditary trustees, as may be considered necessary by 1[the Government, the Commissioner, or the Joint/Deputy Commissioner], as the case may be.

- (3) Every trustee appointed under sub-section (1) and subject to the result of an application, if any, filed under sub-section (4), every non-hereditary trustee appointed under sub-section (2) shall hold office for a term of 6[two year], unless in the meanwhile the trustee is removed or dismissed or his resignation is accepted by 3[the Government, the Commissioner or the Joint / Deputy Commissioner], as the case may be, or he otherwise ceases to be a trustee.

Provided that every trustee, who has completed a term of office of one year on the 16th day of July 2006 shall ceases to hold office forthwith and every trustee who completes a term of office of one year after such date shall cease to hold office on such completion.

Provided further that every trustee who has not completed a term of office of one year on the date of commencement of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 2010(Tamil Nadu Act 12 of 2010) shall continue to be the trustee for the period of two years from the date of his appointment.

- (4) Where 2[the Government, the Commissioner or the Joint / Deputy Commissioner], by order, appoints a non-hereditary trustee or trustees, the hereditary trustee or trustees may, within

thirty days of the receipt of the order, file an application to the Court to set aside or modify such an order:

Provided that the Court shall have no power to stay the order of 3[the Government, the Commissioner or the Joint / Deputy Commissioner], as the case may be, pending the disposal of the application."

10. The term of the non-hereditary trustee is for a period of two years and since the period of two years has already expired, appointment has to be made. Persons who have already appointed cannot be allowed to continue beyond prescribed under the Act unless fresh application are called.

11. The case of the petitioner is that the scheme decree is to be amended in the light of the migration, by the members of the community for livelihood to different parts of the State and World Globe since 1982 the changes in the technology allows the members to take participate in the meetings of the Trust.

12. Considering the fact that O.A.has been filed as early as 20.07.2021 which was returned on 01.07.2021 and has been represented during the pendency of the present writ petition, I am inclined to dispose this writ petition by directing the second respondent, Joint Commissioner to dispose consider the O.A. filed by the petitioner after hearing of all the interested persons belonging to the aforesaid community, preferably within a period of six months from the date of receipt of a copy of this order.

13. There shall however be no impediment to proceed with the appointment of non-hereditary trustees in terms of the impugned notice. It shall be however made clear that the appointments will be subject to the proposed amendment of the by-law, if any to be made pursuant to order in O.A.No.66 of 1980.

14. This writ petition is disposed with the above observation. No costs Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai.
2. The Joint Commissioner,
Hindu religious and Chartiabale Endowments Department,
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3. The Assistant Commissioner,
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4. The Executive Officer,
Arulmigu Punukeeswarar Temple,
Koorainadu, Mayiladuthurai Taluk.

+1cc to Mr.Mr.B.Jawahar, Advocate, S.R.No.36131

+1cc to the Government Pleader, S.R.No.36803

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GPL[co]

NSK/25/07/2022