



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2022

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.270 of 2022

and

W.M.P.(MD)No.204 of 2022

R.Lakshmi

.. Petitioner

Versus

1.The Principal Secretary to Government of Tamil Nadu,
Tourism, Culture and Endowment (ANi3-1)
Department,
Fort St. George, Secretariat,
Chennai - 600 009.

2.The Commissioner,
H.R. & C.E. (Admin.) Department,
Chennai - 34.

3.The Joint Commissioner,
H.R. & C.E. (Admin.) Department,
Madurai - 625001.

4.The Inspector,
Madurai North,
H.R. & C.E. Department,
Madurai - 625001.

5.Chellapandian, S/o.Mahamuni Poosari

6.Geetha, W/o.Chellapandian

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to take action against the respondents 5 and 6 from functioning as Hereditary Trustees cum Poojari of the Arulmigu Pandi Muneeswarar Temple, Melamadai, Madurai and to initiate disciplinary proceedings based on the representation given by the petitioner, dated 26.04.2021.

For Petitioner	:	Ms.J.Anandhavalli
For R1 to R4	:	Mr.P.Subburaj
		Special Government Pleader
For R5 and R6	:	Mr.V.Meenakshisundaram

ORDER

After hearing the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1 to 4 and

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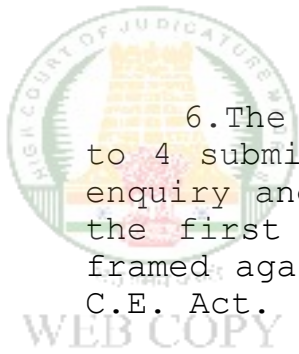
the learned counsel for the respondents 5 and 6, this Court is inclined to dispose of this Writ Petition.

2.The petitioner has sought to take action against the fifth respondent under Section 53(2)(g) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'the H.R. & C.E. Act'] by the first respondent. Both the petitioner and the fifth respondent are the descendants of the erstwhile Trustee, viz., Mahamuni Poosari. The petitioner appears to be the daughter-in-law of the said Mahamuni Poosari through his first wife. After the death of the petitioner's husband and on account of the petitioner's son having attracted disqualification, the petitioner stepped into the shoes of the Hereditary Trustee in terms of the order passed by the Hon'ble Supreme Court, dated 29.01.2020, in S.L.P.(C)No.803 of 2020. It is the case of the petitioner that the fifth respondent, who is also a descendant of Mahamuni Poosari through the third wife, has acquired disqualification under Section 53(2)(g) of the H.R. & C.E. Act and therefore, he is incompetent to function as the Hereditary Trustee of the religious institution viz., Arulmigu Pandi Muneeswarar Temple, Melamadai, Madurai.

3.Though there is a long history to the proceedings, the same is not reproduced. For the sake of brevity, it would suffice to state that the petitioner filed representation dated 26.04.2021 before the first respondent, stating that the aforesaid Temple comes under Section 46(iii) of the H.R. & C.E. Act and therefore, the first respondent is the appropriate authority to take a decision on the aforesaid representation of the petitioner.

4.The learned Special Government Pleader for the respondents 1 to 4 today filed copies of certain inter-departmental communications exchanged between the respondents 2, 3 and 4. Vide Office communication dated 25.10.2021, the second respondent Commissioner has asked the third respondent Joint Commissioner to enquire into the complaint/representation of the petitioner, dated 26.04.2021. The third respondent Joint Commissioner, in turn, has sent a communication dated 27.01.2022 to the fourth respondent Inspector and has called the fourth respondent to enquire and give a report as to the genuineness of the allegations contained in the representation dated 26.04.2021 of the petitioner. The fourth respondent in turn fixed the date of personal hearing for both the petitioner and the fifth respondent on 21.02.2022 and 24.02.2022 respectively.

5.The learned counsel for the petitioner would submit that the function of the appropriate authority under Section 53 of the H.R. & C.E. Act cannot be delegated and therefore, the aforesaid communications given by the learned Special Government Pleader today indicate that there is an abdication of power by the first respondent.



6.The learned Special Government Pleader for the respondents 1 to 4 submits that the rules of business contemplates a preliminary enquiry and furnishing of report to the appropriate authority viz., the first respondent to decide as to whether a charge has to be framed against the fifth respondent under Section 49 of the H.R. & C.E. Act.

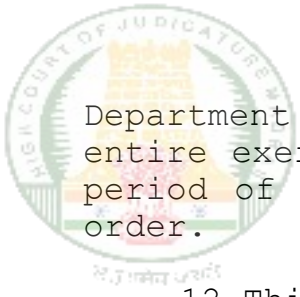
7.The learned counsel for the fifth respondent submits that by asking the fourth respondent to furnish documents, the respondents have not abdicated the function and submits that eventually the issue will have to be decided by the first respondent. The learned counsel submits that there is no abdication of power and/or function by the first respondent merely because the Officers of the department have been asked to enquire and give a preliminary report.

8.I have heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1 to 4 and the learned counsel for the respondents 5 and 6.

9.Though the learned counsel for the fifth respondent has made an attempt to state that the fifth respondent has not attracted the sting under Section 53(2)(g) of the H.R. & C.E. Act, I am of the view that this issue has to be decided by the first respondent as the appropriate authority based on the representation dated 26.04.2021 of the petitioner. It is based on the conviction of the fifth respondent by the learned Judicial Magistrate No.VI, Madurai, in C.C.No.401 of 2018, vide judgment dated 09.03.2019. The first respondent has, therefore, to decide whether an enquiry is warranted or not and whether charges have to be framed. It is for the first respondent as the appropriate authority to examine the complaint in the said representation and based on the documents and issue appropriate charge memo under Section 53 of the H.R. & C.E. Act to the fifth respondent. This is not the case where the petitioner has asked the third respondent to enquire and then come to the conclusion as to whether the fifth respondent should be issued with a charge memo.

10.Considering the above, this Writ Petition is disposed of by directing the first respondent to come to a *prima facie* conclusion based on the representation and documents filed by the petitioner as to whether is a fit case to issue charge memo under Section 53(3) of the H.R. & C.E. Act. In case, the first respondent comes to such a conclusion, he shall proceed to frame charges against the fifth respondent as per Section 53(3) of the H.R. & C.E. Act.

11.In the light of the above, there shall be a Mandamus to the first respondent to enquire into the representation of the petitioner, dated 26.04.2021 and pass appropriate orders after duly considering the legal and factual submissions of the rival parties. Needless to state that this order does not curtail the power of the first respondent to take assistance from the other Officers of the



Department to collect evidence for coming to a fair conclusion. The entire exercise shall be completed by the first respondent within a period of three months from the date of receipt of a copy of this order.

12.This Writ Petition stands disposed of with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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To

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+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-7009[F] dated 18/02/2022)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-7053[F] dated 18/02/2022)

+1 CC to M/s.SPL GP (SR-7112[F] dated 18/02/2022)

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RD(04.03.2022) 4P 8C