



WEB COPY

W.P. (MD) No.1859 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) No.1859 of 2018

and

W.M.P. (MD) No.1997 of 2018

R.Murugesan

... Petitioner

/vs./

1.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.

2.Chidambaram

3.Duraiaraj

4.Veerabathiran

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the impugned order in Na.Ka.No.626/2017/A2 dated 10.01.2018 passed by the 1st respondent and quash the same as illegal.

For Petitioner : Mr.M.Kannan

For R1 : Mr.P.Subbaraj

Special Government Pleader

For R2 to R4 : Mr.T.R.Subramanian

ORDER

In the present writ petition, the petitioner has challenged the impugned order passed by the 1st respondent, rejecting the request of the petitioner as a candidate for being elected as Managing Trustee in terms of the scheme framed by the Joint Commissioner, HR & CE Department, Madurai, under Section 64(1) of the HR & CE Act, 1959 (*herein after referred to as Act*).

2.The impugned order dated 10.01.2018 of the 1st respondent is pursuant to the representation of the respondents 2, 3 and 4 herein, wherein it has been stated that the petitioner cannot be elected. Based on the representation of the respondents 2, 3 and 4, one of them among themselves should be elected as Managing Trustee of the temple, called Arulmigu Akoraveerabathrasamy Temple, Natham Town and Taluk, Dindigul District.

3.The impugned order is primarily challenged on the ground that the petitioner was not put on notice and that the scheme framed under Section 64(1) of the Act has to be implemented only after the Gazette notification and therefore, even in terms of the Clause 4 of



the scheme, the petitioner has not been disqualified from participating in the election to the post of Managing Trustee. It is submitted that merely because the petitioner officiated the aforesaid temple in the capacity as hereditary and Managing Trustee for the past 20 years prior to the scheme, *ipso facto* will not disqualify the petitioner from contesting the election for the post of the Managing Trustee.

4. Opposing the prayer in the present writ petition, the learned Special Government Pleader appearing for the official respondent, namely, the 1st respondent, submits that the petitioner has an alternate remedy under Section 114 of the Act and therefore, he should be directed to workout the remedy before the appellate authority, namely, the Government.

5. Mr. T. R. Subramanian, learned counsel appearing for the private respondents on the other hand submits that the petitioner is not entitled to participate in the election as he has been the Managing Trustee for the last 20 years.

6. I have considered the rival arguments advanced by the learned counsel for the petitioner, learned Special Government Pleader for the 1st respondent and the learned counsel for the private respondents 2 to 4.

7. Clause 4 of the scheme, based on which the petitioner has been disqualified by the impugned order, reads as under:-

"4. Such trustees shall elect one among them as managing trustee, in rotation as per the provisions of the Act. In the absence of any unanimity in the matter of choice or election of the managing trustee, by the trustees, the competent authority may appoint managing trustee. If one person selected as Managing Trustee he is holding at one time alone after he is not to be elected for consequent two periods."

8. The impugned order has been passed without notice to the petitioner at the behest of the petition filed by the private respondents herein on 11.09.2017. Clause 4 from the scheme *prima facie* indicates that the aforesaid Clause will apply after the 1st election. Though the above Clause has not been properly paraphrased, a cumulative reading of the Clauses in the draft scheme indicates intention to disqualify a person after election for one term. In other words, if a person is elected for a term, he cannot be allowed to contest for the ensuing two periods. The election to the post of Managing Trustee has not been held so far.

9. Considering the above and considering the fact that the impugned order has been passed without hearing the petitioner, this writ petition stands allowed. The impugned order of the 1st



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respondent in Na.Ka.No.626/2017/A2 dated 10.01.2018 is hereby quashed and the matter is remitted back to the 1st respondent to pass a speaking order by applying Clause 4 of the scheme framed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai, strictly r/w Clause 1 of the said scheme. The said exercise shall be carried out by the 1st respondent within a period of 8 weeks from the date of receipt of a copy of this order. It is needless to state that the petitioner and all the private respondents herein shall be heard before such orders are passed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.

+1 CC to M/s.T.R.Subramanian, Advocate (SR.No.6370)

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MGJ(03.03.2022) 3P 3C