IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2023

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.No.147 of 2020 &
C.M.P. Nos. 2139 and 2141 of 2020

Sri-la-Sri Sathya Gnana Mahadeva
Desika Paramachariya Swamigal
Adheenakarthar of Velakurichi Adheenam
and Hereditary Trustee of
Sri. Uthrapatheeswaraswami Temple
at Tiruchengattankudi
Nagapattinam District &
Sri. Meganathaswami Temple
at Tirumeyachur
Tiruvarur District. ...Appellant

Vs.

The Commissioner
Hindu Religious and Charitable Endowment
Department (Admn)
119, Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034. ... Respondent

Prayer : Writ Appeal filed under Section 15 of Letters Patent against the order passed in Writ Petition No.20784 of 2010 dated 20.12.2019.

For Petitioner	: Mr.V. Raghavachari Senior Counsel for Mr. A.R. Nixon
For Respondent	: Mr.N.R.R. Arun Nataraj Special Government Pleader (HR&CE)

JUDGMENT

(R.HEMALATHA, J.)

Challenging the order dated 20.12.2019 passed by the learned Single Judge of this Court in W.P. No.20784 of 2010, the present Writ Appeal is filed by the appellant.

2. The brief facts of the case are as follows:

i. The appellant/petitioner is the hereditary trustee of Sri Utharapatheeswaraswami Temple at Thiruchengattangudi, Nagapattinam District and Meganathaswamy Temple, Tirumeyachur, Thiruvarur District.

ii. A Scheme Suit was filed by Hindu Religious and Charitable Endowments Department, Madras, in respect of three temples, namely, Sri Agneeswarasami Temple at Tiruppugalur, Sri Utharapatheeswaraswami temple at Tiruchangattangudi and Sri Meganathaswami temple at Tirumachiyur in O.S. Nos.28, 29 and 60 of 1913 before the Temporary Sub Court, Tanjore District. A Scheme Decree was passed by the said Court which was subsequently modified in O.S. No.7 of 1933 on the file of the District Judge, Nagapattinam, vide decree and judgment dated 23.04.1935, based on which, the Hindu Religious and Charitable Endowments Department (in short HR&CE Department), framed Rules on 09.12.1949.

iii. As per Rule 19, the Managing Trustee shall be the person competent to operate the bank account and as per Rule 2, the Treasurer shall be in charge and custody of all amounts, records, papers, etc., including passbook and cheque book. The treasurer shall not, at any time, retain more than Rs.300/- in his control.

iv. The appellant's/petitioner's grand father was originally the hereditary trustee of all the three temples and after his demise, the father of the appellant/petitioner was recognised as the hereditary trustee. Thereafter the present appellant became the hereditary trustee and the same was also approved by the respondent herein.

v. While so, the respondent issued the impugned notice dated 20.08.2010 in Na.ka. No.14498/2010 H.1 directing the appellant herein to open a second account in respect of Sri Utharapatheeswaraswami Temple at Thiruchengattangudi, Nagapattinam District and Sri Meganathaswamy Temple, Tirumeyachur, Thiruvarur District, for which the appellant sent a suitable reply stating that there is no provision for opening of the second account under the Scheme decree.

vi. According to the appellant/petitioner, the Managing Trustee has the general power of supervision and control over the treasurer as per Clause 11 of the Scheme Decree and therefore, the respondent is wrong in issuing the notice dated 20.08.2010. Challenging the same, the present Writ Petition is filed.

vii. The respondent in his counter had stated that both the temples referred in the petition come under the administration and supervisory control of HR&CE Department and have been included in the list published under Section 46 of the Tamil Nadu Hindu Religious and Charitable Endowments Act (in short HR&CE Act).

viii. As per Rule 7 of the Collection of Income and the incurring of Expenditure Rules of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act XXII of 1959), a second account should be opened in the name of the Executive Officer and the amounts required for expenditure shall be transferred from the first account to the second account. It is also contended that the amount to be operated in the second account shall not exceed the limit fixed by the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be and such limit shall not exceed 1/12th of the annual expenditure of the temple. According to the respondent if 1/12th of the annual expenditure of the temple is spent on festivals, the petitioner can incur additional expenditure not exceeding 1/12th of the annual expenditure of the temple.

ix. It is specifically contended by the respondent that as per Rule 7 of the Collection of Income and the incurring of Expenditure Rules of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act XXII of 1959), a notice dated 20.08.2010 was issued and that after the HR&CE Act came into force and as per Section 118 (2) (b) (i) and (ii) of the said Act, any scheme settled under the earlier Act, viz., Madras Act II of 1927, which is repugnant to any provisions contained in the HR & CE Act (Tamil Nadu Act XXII of 1959) and the rules made thereunder, latter provisions alone would prevail over the former scheme. That apart under Section 27 of the HR&CE Act, all the trustees of the religious institutions shall be bound to obey all the lawful orders issued under the provisions of the Act by the Government or Commissioner etc. The petitioner who is the Head of Math and Ex Officio hereditary trustee of the temples, has been recognised and being permitted by the court as per scheme decree, is only to contribute spiritual obligations and act as an Advisor to the management of the temples. The petitioner cannot be a sharer in the income of the temples. When the petitioner has not objected to the opening of the second account for another temple under the very same scheme, it is not open to him to raise objections in the instant petition.

x. The learned Single Judge, after considering the rival submissions of both the parties, dismissed the Writ Petition on the following grounds.

1. Rule 19 framed by the respondent in the year 1949 based upon the power conferred under Clause 33 of the Scheme permitted the Managing Trustee to operate the bank account which was maintained by the treasurer and hence there is no prohibition for opening of a second account.

2. Clause 33 of the scheme is not in consonance with the main scheme which empowers the treasurer alone to operate the account and the Managing Trustee has

been authorised only to supervise the treasurer.

3. The impugned order has been passed pursuant to Rule 7 of the Collection of Income and the incurring of Expenditure Rules of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act XXII of 1959).
4. Even assuming that the scheme prohibits the opening of a second account in the name of the Executive Officer (Treasurer), as per Section 118(2)(b)(i) & (ii) of the HR&CE Act and the said Act alone would prevail over the scheme and therefore, it is not open to the petitioner to contend that the order dated 20.08.2010 has been passed against the scheme and without any jurisdiction.

Challenging the abovesaid orders, the present Writ Appeal is filed.

3. Heard Mr.V. Raghavachari, learned Senior Counsel assisted by Mr. A.R. Nixon, learned counsel for the petitioner and

Mr.N.R.R.Arun Nataraj, learned Special Government Pleader (HR&CE) for the respondent.

4. Mr.V. Raghavachari, learned Senior Counsel contended as follows:

(1) As per Rule 19 framed by the HR&CE Department on 09.12.1949, the Managing Trustee alone is competent to operate the bank account and the treasurer who is working under the petitioner cannot be directed to open a second account especially when the treasurer is not authorised to retain more than Rs.300/- at a time in his control or custody as per the Scheme Decree.

(2) The learned Single Judge interpreted the scope of the Scheme Decree and the Rules framed for the temples wrongly and dismissed the Writ Petition.

(3) The respondent has not only violated the Scheme Decree passed in O.S. No.7/33 but also violated the Rules framed by the Department itself and till date no Executive Officer has been appointed for both the temples and therefore, directing the petitioner to open a

second account as per Rule 7 of the Collection of Income and the incurring of Expenditure Rules of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act XXII of 1959), is erroneous.

4.1. The learned Senior counsel appearing for the petitioner relied on the decision in ***K.B.Sethuraman vs. State of Andhra Pradesh*** reported in ***2022 LiveLaw AP130*** wherein it has been held that the temples administered by the Math are exempted from the provisions of HR&CE Department and therefore HR&CE Department cannot appoint an Executive Officer by treating the temples administered by the Math as separate from the math and it is violative of Article 26D of the Constitution of India as it affects Madathipathis' right of administration of the temple.

5. Per contra, learned counsel appearing for the respondent contended that the learned Single Judge, taking into consideration of Rule 7 of the Collection of Income and the incurring of Expenditure Rules of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act XXII of

1959) and also the provisions of HR&CE Act had rightly held that it is not open to the petitioner to contend that the impugned order has been passed against the Scheme and without any jurisdiction. He further contended that the Managing Trustee, even as per Clause 33 of the Scheme, can only supervise the treasurer who can operate the account.

6. It is relevant to extract Rule 7 of the Collection of Income and the incurring of Expenditure Rules of the Tamil Nadu HR&CE Act, 1959.

"7. Accounting collections without delay.-

(a) All receipts shall be deposited in the first account to be operated jointly by the Chairman, Board of Trustees and the Executive Officer concerned. The cheque book and pass book shall be in the custody of the Executive Officer.

(b) A |second account shall be opened in the name of the Executive Officer and the amounts required for expenditure shall be transferred from the first account of the second account. The amount to be operated in the second account

shall not exceed the limit fixed by the Commissioner, joint commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, and such limit shall not exceed one twelfth of the annual expenditure of the temple. If one twelfth of the annual expenditure of the temple is spent on festivals, further expenditure not exceeding one-twelfth of the annual expenditure of the temple may be operated.

The learned counsel appearing for the respondent mainly relies on this Rule and contends that a second account should be opened in the name of the Executive Officer and the amount required for expenditure should be transferred from the first account to the second account. At this juncture, it is relevant to point out that so far no Executive Officer has been appointed to Utharapatheeswaraswami Temple at Thiruchengattangudi, Nagapattinam District and Meganathaswamy Temple, Thirumachiyur, Thiruvarur District. As per Rule 7(a) of the Collection of Income and the incurring of Expenditure Rules of the Tamil Nadu HR&CE Act, 1959, all receipts should be deposited in the first account to be operated jointly by the Chairman, Board of Trustees and the Executive Officer concerned and the cheque book and the pass book shall be in the custody of the Executive Officer. As per Rule 7(b), a second account shall be opened in the name of the Executive Officer and the amounts required for expenditure should be transferred from the first account to the second account. Thus Rule 7 clearly spells out appointment of an Executive Officer and when no Executive Officer is appointed to both the temples, Rule 7 would not apply. In the circumstances, the order dated 20.08.2010 passed by the HR&CE Department is erroneous in law. Moreover, in the decision in ***K.B.Sethuraman vs. State of Andhra Pradesh*** (cited supra), it has been held thus:

> *"The above discussion leads us to an irresistible conclusion that the Ahobilam Temple is an integral and inseparable part of Ahobilam Math, which was established as a part of propagation of Hindu religion and for rendering spiritual service for propagating Sri Vaishnavism. The successive Jeeyars are the trustees of the Ahobilam Devasthanam and since the Government cannot appoint an Executive Officer for the Ahobilam Math, it has no power to appoint and Executive Officer for the Ahobilam Temple by treating it*

separate from the Math. Appointing an Executive Officer for Temple, which is a part of the Math, is violative of Article 26(d) of the Constitution of India, as the same affects Jeeyars'/Madathipathis' right of administration.

7. In the circumstances, the Writ Appeal is allowed. No costs. Consequently connected miscellaneous petitions are closed. The order dated 20.12.2019 passed in W.P. No.20784 of 2010, is set aside.

(V.M.V.,J.) **(R.H.,J.)**
24.02.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

The Commissioner
Hindu Religious and Charitable Endowment
Department (Admn)
119, Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034.

V.M.VELUMANI, J.
and
R. HEMALATHA, J.
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