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W.P.No.10240 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.10240 of 2022 &

WMP.Nos.9953 & 9954 of 2022

S.Natarajan

... Petitioner

Vs

1. The State of Tamil Nadu
Rep. by Principal Secretary
Government of Tamil Nadu Tourism, Culture
and Religious Department,
Fort St. George, Chennai – 600 009.
 2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai District.
 3. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Coimbatore District.
 4. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Erode District.
 5. R.Eswaran
 6. G.Raju
- ... Respondents



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Prayer:- Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in G.O. [P] No.50, Tourism, Culture and Religious Endowment [AN 3-1] Department dated 04.04.2022 nominating the respondents 5 and 6 as non-hereditary trustees of Arulmigu Ramalinga Sowdeswariamman Thirukkoil, Punjai Puliampatti, Sathiyamangalam Taluk, Erode District and to quash the same and further direct the first respondent herein to nominate the petitioner as one of the non-hereditary trustees to the above mentioned temple.

For Petitioner : Mr.K.Myilsamy

For Respondents : Mr.N.R.R.Arun Natarajan
Spl. Government Pleader [HR & CE]
– R1 to R4

Mr.K.Shyam Sunder – R5 & R6

ORDER

This Writ Petition has been filed to quash the Government Order of the first respondent in G.O. [P] No.50, Tourism, Culture and Religious Endowment [AN 3-1] Department dated 04.04.2022 nominating the respondents 5 and 6 as non-hereditary trustees of Arulmigu Ramalinga Sowdeswariamman Thirukkoil, Punjai Puliampatti, Sathiyamangalam



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Taluk, Erode District and direct the first respondent herein to nominate the petitioner as one of the non-hereditary trustees to the above mentioned temple.

2. The case of the petitioner is that the petitioner belongs to Devangar Chettiyar Community and there is a deity known as 'Ramalinga Sodeswariamman' in the petitioner's village. A scheme was framed in O.A.No.13 of 2007 on 10.07.2012. According to the scheme, the fourth respondent herein will appoint trustees from amongst the Devanga Chettiar Community in Punjai Puliampatti Village and the fourth respondent can appoint not less than three trustees and not more than five persons as non hereditary trustees of the said temple. In the year 2012, the fourth respondent by his notification dated 20.11.2017, called for applications for appointment of non-hereditary trustees to the said temple and appointed three persons as Non-hereditary trustees, which has been challenged in W.P.Nos.22891 to 22895 of 2018 and W.P.Nos.22896 of 22900 of 2018. This Court by its Order dated 20.01.2020 directed the respondents to call on 03.02.2020 fresh applications from the petitioners as well as from the respondents and give the Village Committee people a time period of two



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weeks up to 17.02.2020 for submission of applications for the post of non-hereditary trustees or nominated trustees or both.

3. Pursuant to the above Order, a notification in Na.Ka.No.474/2020/A3 dated 03.02.2020 has been called for fresh applications for appointment of non-hereditary trustees and the petitioners and 12 others have applied for appointment of non hereditary trustees. The Assistant Commissioner, HR & CE Department, Erode had appointed three persons, viz., K.Venkatachalam, K.Gunasekaran and S.Poongodi as non hereditary trustees by his Order dated 27.03.2020. On the same day, two other names were recommended by the Assistant Commissioner, HR & CE Department, Erode to the first respondent herein for nominating the said two recommended persons as non-hereditary trustees. However, the first respondent is not interested in complying the Order of this Court. Hence, Contempt Petition came to be filed in Contempt Petition No.69 of 2022, wherein the Assistant Commissioner filed a status report stating that he has recommended the name of the petitioner and the fifth respondent for appointment as nominated trustees. However, contrary to the above, the Government has appointed the fifth and sixth respondents as nominated



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trustees of the temple. Challenging the same, the present Writ Petition has been filed.

4. The respondents have filed a counter to the effect that 13 applications were received for appointment of Non-hereditary Trustees for the suit temple. Among them, six persons were found disqualified and from rest of the seven applicants, the Assistant Commissioner had appointed three persons as Non-hereditary Trustees as per the provisions of the Hindu Religious and Charitable Endowments Act. The Assistant Commissioner had sent proposal to the Commissioner for nomination of two persons out of rest of the four applicants and the same was forwarded to the Government for consideration and the writ petitioner is one among them. The Government in their letter No.6931/RE3-1/2020-1, dated 15.10.2020, requested the Commissioner to send applications of all the qualified persons. The report of the Assistant Commissioner was received by the Commissioner on 24.03.2022 along with Police Verification Certificate on the said four remaining persons and the said report was forwarded to the Government by the Commissioner on 04.04.2022 for consideration of the Government as per the provisions of the Hindu



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Religious and Charitable Endowments Act. The Government after perusing the reports had passed the impugned Order nominating one R.Eswaran and G.Raju as Government Nominee. The power to nominate two persons is vested with the Government and the Assistant Commissioner has no authority to choose two persons among the qualified persons for nomination of trustees. It is the discretion of the Government to nominate two persons as trustees from the applicants and the person cannot rely upon the list sent by the Assistant Commissioner. Hence, opposed this Writ Petition.

5. The learned counsel appearing for the petitioner vehemently submitted that the Assistant Commissioner has infact recommended appointment of two persons. On the contrary, other than the persons recommended was appointed by the Government, which is totally beyond the powers of the Government. Therefore, the very appointment of the hereditary trustees, who have not been recommended by the Assistant Commissioner is not valid in the law.



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6. The learned counsel appearing for the petitioner brought to the notice of this Court the status report filed by the Commissioner in Contempt proceedings wherein the Assistant Commissioner has recommended two persons for nomination of trustees by the Government. Similarly, in the same Status Report, it is stated that the Government has requested the Assistant Commissioner to send additional particulars on 27.11.2020 and as requested by the Government, the Assistant Commissioner has sent the details to the Government. According to him, the Government has appointed the persons other than the persons recommended by the Assistant Commissioner, which is not valid in the eye of law. Hence, the entire Government Order has to be quashed.

7. The learned Special Government Pleader appearing for the respondents vehemently contended that the Government has absolute power as per Section 49 of the Hindu Religious and Charitable Endowments Act. In addition to the trustees appointed by the Assistant Commissioner, the Government may nominate two persons who are qualified for appointment as trustees under this Act as members of the said Board of Trustees, having regard to the interest of the public generally, the



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income and the properties of the religious institution, the number of worshippers and importance of the religious institution as a pilgrim center.

According to him, the Assistant Commissioner has sent a proposal to the Commissioner for nomination of two persons out of the rest of the four applicants and the same has been duly forwarded to the Government for consideration. Whereas, the Government had requested the Commissioner to send applications of all the qualified persons, who are four in number. Accordingly, the report from the Assistant Commissioner has been received on 24.03.2022 along with Police Verification Certificate on the said four remaining persons and the said report was forwarded to the Government by the Commissioner on 04.04.2022 for consideration of the Government. The Government after considering the entire applications of four members and also report from the police, appointed fifth and sixth respondents as nominated trustees. Hence, submitted that this Writ Petition is not maintainable.

8. As rightly pointed out by the Special Government Pleader, originally the Assistant Commissioner appointed three persons as non hereditary trustees out of 7 applicants, who are qualified to be appointed as



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trustees. However, he has forwarded a letter for nominating 2 trustees by the Government. When the Commissioner has also forwarded the same to the Government, the Government has once again sought a report from the Commissioner with a direction to send all the qualified persons, who are four in number. Thereafter, the Assistant Commissioner also forwarded the applications of four in number along with police verification certificates. Based on the same, the Government had nominated the fifth and sixth respondents as nominated trustees.

9. It is relevant to note that under section 49 of the Hindu Religious and Charitable Endowments Act, the power is vested with the Assistant Commissioner to appoint trustees and power vested with the Assistant Commissioner will not take away the right of the Government to nominate two persons, who are qualified for appointment of trustees under the Hindu Religious and Charitable Endowments Act. The proviso to Section 49 makes it clear that in addition to the trustees appointed by the Assistant Commissioner, the Government may nominate two persons who are qualified for appointment as trustees under this act. The documents produced on the side of the respondents clearly indicate that the



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Commissioner has forwarded all the names of the qualified persons to the Government. Originally, the Assistant Commissioner has forwarded a letter to the Commissioner to forward the same to the Government for nomination of two persons as nominated trustees. In the above letter he has nominated only two persons, the petitioner and the fifth respondent herein. However, the Government has sought details from the Commissioner to send all the applications of the qualified persons with necessary remarks. After obtaining the report from the Assistant Commissioner as well as the Commissioner, the Government has nominated two persons, who are qualified to be appointed as trustees. Therefore, this Court is of the view that when the Assistant Commissioner has no power to recommend and the Government has retained the power to nominate the persons as nominated trustees and the Government has selected those persons from the qualified persons and appointed as trustees, merely because the nomination of the petitioner was not considered by the Government, it cannot be said that the entire process is vitiated. When the persons nominated do not suffer from any disqualification for appointment by the Government, as a matter of right, it



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cannot be questioned by the person who was not selected. In such view of the matter, I do not find any merits in this Writ Petition.

10. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

02.03.2023

Index: Yes/No
Neutral Citation : Yes/No
vrc

To,

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Rep. by Principal Secretary
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and Religious Department,
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N.SATHISH KUMAR, J.

VTC

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