



Writ Petition No.13815 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.13815 of 2023

and

W.M.P.Nos.13478 & 13485 of 2023

P.S.Bharanidharan
S/o.P.C.Sridharan Naidu

...Petitioner

Vs

- 1.State of Tamil Nadu
represented by its Secretary,
Tourism, Culture & Religious Endowments Department,
Fort St.George, Chennai - 9.
- 2.The Commissioner,
Hindu Religious & Endowments Department,
139, Uthamar Gandhi Road,
Nungambakkam, Chennai - 600 034.
- 3.The Joint Commissioner - II,
Hindu Religious & Charitable Endowments Department,
R.K.Mutt Road, Mandaveli,
Chennai - 600 004.
- 4.The Assistant Commissioner,
Hindu Religious & Endowments Department,
Padi, Chennai - 600 050.



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5.The Executive Officer,
Arulmighu Aathi Vyathi Hara Bhaktha
Anjaneya Swamy Temple,
Ram Nagar, Nanganallur,
Chennai - 61.

6.Sri Maruthi Bhaktha Samajam Trust
represented by its Trustee,
R.Prabhakar,
having office at
No.1, 8th Street, Ram Nagar,
Naganallur, Chennai - 600 061.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records culminating in issuance of impugned notification by the third respondent in Dhinamani dated 21.04.2023 bearing Ref.No.Se.Ma.Tho.Ee/398/Varaikalai/2023, quash the same as ultra vires to the provision of HR & CE Act.

For Petitioner : Mr.N.Alagunarayanan

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader [R1 to R5]
Mr.V.Srikanth [R6]

ORDER

This writ petition has been filed challenging the impugned notification issued by the third respondent in Dhinamani Newspaper dated 21.04.2023 calling for applications for appointment of non-hereditary trustees to the



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Arulmighu Aathi Vyathi Hara Bhaktha Anjaneya Swamy Temple situated at
Naganallur, Chennai.

2. The petitioner has filed this writ petition in his capacity as the worshiper. According to the petitioner, the trust, which is running the temple had sought for exemption under certain provisions of the Act and those exemptions were also granted by the Government. The further case of the petitioner is that the trust was governed by a scheme pursuant to the order passed by the Joint Commissioner of Hindu Religious and Charitable Endowments Department [for brevity 'the Department'] in O.A.No.3 of 2018. As per the scheme, the appointment of non-hereditary trustees is dealt with in the following manner:

“5. The Non-hereditary trustees shall be duly appointed by the appropriate authority under the Act in the manner prescribed hereunder

Not less than three and not more than five persons from among the members of the Society called the Sri Maruthi Bakthasamajam Trust, (Reg.No.53/1985) Ram Nagar, Nanganallur, Chennai – 61.”

3. The petitioner filed O.A.No.1 of 2023 before the Joint Commissioner seeking for modification of the scheme. This application was pending before the Joint Commissioner. At that point of time, the impugned



notification was issued by the third respondent calling for applications to appoint non-hereditary trustees in line with the existing scheme. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Heard Mr.N.Alagunarayanan, learned counsel for petitioner, Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for respondents 1 to 5 and Mr.V.Srikanth, learned counsel appearing for the sixth respondent.

5. The main ground that was urged by learned counsel for petitioner is that Section 47(1)(c) of the Hindu Religious and Charitable Endowments Act [for brevity 'the Act'] provides as follows:

“47. Trustees and their number and term of offices. -

(1)(a)

(b)

(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 the Government, the Commissioner, or the Joint Commissioner or the Deputy Commissioner as the case may be, may, pending the constitution of such Board of Trustees, under this subsection, appoint a fit person to perform the functions of the Board of Trustees.”

6. It was contended that the said provision specifically provides that



the Board of Trustees shall consist of one member from the Scheduled Castes or Scheduled Tribes and another member shall be a woman and whereas in the present case, this provision has been given a complete go-by and an attempt is being made to appoint non-hereditary trustees in line with the existing scheme framed by the Joint Commissioner. Therefore, learned counsel for petitioner submitted that there is repugnancy between the scheme and the provisions of the Act and hence, as per Section 50 of the Act, the Act will have an overriding effect on the scheme. Consequently, it was contended that if at all non-hereditary trustees are to be appointed to the subject temple, it has to be made only in line with Section 47(1)(c) of the Act.

7. Learned counsel for petitioner further contended that the Joint Commissioner has been vested with a *suo motu* power u/s.64(5)(b) of the Act to interfere and modify/cancel the existing scheme in order to ensure that the scheme is in conformity with the provisions of the Act. In view of the same, the Joint Commissioner ought to have exercised such a jurisdiction since the existing scheme is repugnant to the provisions of the Act and it is unnecessary for the Joint Commissioner to wait till final orders are passed in



the pending application in O.A.No.1 of 2023 filed by the petitioner. It was further contended that the fit person has already been appointed to manage the affairs of the temple and the same position could have been continued till a final decision is taken on the plea made by the petitioner seeking for modification of the scheme. On all these grounds, learned counsel for petitioner sought for the interference of this Court on the impugned notification issued by the third respondent in the daily newspaper. Learned counsel also relied upon the judgment of this Court in ***T.E.Vijayaraghavan & another v. The Joint Commissioner, HR&CE Administration Department & Others*** [CDJ 2009 MHC 5162] to substantiate his submissions.

8. *Per contra*, learned Special Government Pleader appearing on behalf of the official respondents submitted that the petitioner had approached the Joint Commissioner seeking for modification of the scheme and even attempted to stay the appointment of non-hereditary trustees pending the application filed and the same was rejected by the Joint Commissioner. Thereafter, the petitioner has approached this Court by filing this writ petition and hence, it was contended that the petitioner cannot be



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allowed to stall the appointment of non-hereditary trustees just because the application filed by the petitioner is pending.

9. Learned Special Government Pleader brought to the notice of this Court the earlier order passed by this Court in W.P.No.13102 of 2023, dated 26.04.2023 in this regard. Learned Special Government Pleader further submitted that the overriding power of Section 50 of the Act must be read with Section 118 of the Act and the same will come into operation only where there is a repugnancy/inconsistency with the provisions of the Act. Learned Special Government Pleader pointed out to Section 7-A of the Act, particularly Section 7-A(5) of the Act and submitted that a District Committee cannot prepare the panel of names for appointment of non-hereditary trustees where the institution is governed by a scheme that has been settled under the Act or by any other Court. Hence, it was contended that the question of preparing a panel of names and identifying persons belonging to the Scheduled Castes/Scheduled Tribes community or a woman will not arise since the subject temple is governed by a scheme and the said scheme is yet to be modified by the Joint Commissioner. In view of the same, learned Special Government Pleader contended that there is absolutely



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no inconsistency with the Act and the petitioner has to necessarily await for the disposal of the application filed by him before the Joint Commissioner and he cannot be permitted to stall the appointment of non-hereditary trustees.

10. Learned counsel appearing on behalf of the sixth respondent apart from reiterating the submissions of learned Special Government Pleader submitted that the petitioner had chosen to file a modification petition before the Joint Commissioner and the maintainability of such a petition has been questioned by the sixth respondent and it is pending before the Joint Commissioner and in the mean time, when steps were taken for appointment of non-hereditary trustees in line with the scheme, the same cannot be questioned by the petitioner and the petitioner has to necessarily await for the final orders in the petition that is pending before the Joint Commissioner. Learned counsel further submitted that the temple is governed by a scheme and the said scheme will operate till it is cancelled/modified and hence, the petitioner cannot insist that the appointment of non-hereditary trustees must be in line with Section 47(1)(c) of the Act.

11. This Court has carefully considered the submissions made on



either side and the materials available on record.

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12. It is not in dispute that the subject temple is governed by a scheme that was framed by the Joint Commissioner through proceedings dated 25.09.2019 in O.A.No.3 of 2018. Insofar as the appointment of non-hereditary trustees are concerned, the relevant clause under the scheme has already been extracted supra. It provides that non-hereditary trustees shall be appointed by appropriate authority and not less than three and not more than five persons shall be from among the members of the trust, which is administering the temple. It is also not in dispute that the petitioner, who claims himself to be a worshiper has already approached the Joint Commissioner and has filed O.A.No.1 of 2023 seeking for modification of the scheme and the same is pending.

13. The main ground on which the petitioner has approached this Court questioning the impugned notification issued by the third respondent in the Dhinamani newspaper dated 21.04.2023 is that the notification is not in line with the mandate u/s.47(1)(c) of the Act. It was contended that the existing scheme is in violation of Section 47(1)(c) of the Act and hence, the



provisions of the Act will have an overriding effect as per Section 50 of the Act.

14. Learned counsel for the petitioner relied upon the judgment of this Court in ***T.E.Vijayaraghavan's*** case referred supra. On carefully going through this judgment, it is seen that the temple in that particular case was governed by a scheme and *suo motu* proceedings were initiated by the Joint Commissioner for modification of the scheme and for the management of the temple. The same was put to challenge in the writ petition. This Court while dealing with the issue, specifically dealt with the appointments made to the post of non-hereditary trustees and specifically dealt with Section 47(1)(a), Section 49(1) and Section 7-A(5) of the Act and it was held as follows:

“39. If the provisions of Sections 7-A, 47 and 49 are understood as dealing with three issues viz., (i) constitution of the Board (ii) composition of the Board and (iii) appointments to the Board, it will be clear that the bar of jurisdiction of the District Committee contained in Section 7-A(5) is restricted to the third stage of appointments to the Board and not to the first stage relating to the power of constitution of the Board of Trustees or to the second stage of prescribing the composition of such Boards. This conclusion is inevitable for two more reasons viz.,:-

(i) there is no reference to any District Committee, either in Section 47(1)(c) which deals with the composition of the Board of Trustees of a listed institution having no hereditary Trustee or in Section 47(2) which deals with the appointment of non-hereditary Trustees for a listed institution which has a hereditary Trustee; and



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(ii) there is also no reference to any District Committee in the second proviso under Section 47(1)(a) which deals with the power of the Government to nominate two additional Trustees, apart from the Trustees appointed by the Commissioner, Joint Commissioner or Deputy Commissioner.

40. Moreover, the first proviso to Section 47(1)(a), makes a reference to the District Committee and the panel of names sent by the Committee, only in respect of the Boards constituted by the Joint Commissioner/Deputy Commissioner or Commissioner, in respect of institutions whose income is (i) not less than Rs.10,000/- but less than Rs.2,00,000/- and (ii) not less than Rs.2,00,000/- but less than Rs.10,00,000/-. In respect of temples, whose annual income is not less than Rs.10,00,000/-, the power of constitution of the Board vests with the Government under Section 47(1)(a)(iii). The first proviso to Section 47(1)(a) makes a reference to District Committee only in relation to Section 47(1)(a)(i) and 47(1)(a)(ii). In respect of Boards constituted by the Government in terms of Section 47(1)(a)(iii), the first proviso under Section 47(1) does not apply, as it applies expressly, only to items (i) and (ii). It is the second proviso which applies to Section 47(1)(a) (iii). There is no reference to a District Committee in Section 47(1)(a)(iii).

41. All the above make it very clear that the bar of jurisdiction of the District Committees to send panel of names for appointment as Trustees, applies only at the stage of making appointments. The bar does not apply either at the stage of constitution of the Board for a religious institution or for determining the composition of the Board of such institution. If the bar under Section 7-A(5) is understood to be applicable even at the stage of constitution of a Board, it would mean that the power of the Joint/Deputy Commissioner, Commissioner and the Government, to constitute a Board of Trustees, would stand ousted by any scheme settled or deemed to have been settled by this Court or any subordinate Court. Such a contention as a matter of fact, has already been negated by the Apex Court in the previous round. Therefore I am of the view that (i) the requirement to have a Board comprising of not less than 3 persons and not more than 5 persons and (ii) the requirement that one of them should be a member of the Scheduled Castes or Scheduled Tribes, cannot be thrown overboard, by taking refuge under Section



7-A(5).

42. As a matter of fact, Section 50 of the Act, steers clear of any doubt in this regard and it reads as follows:-

"Section 50. The power to appoint trustees under Section 47 or Section 49 or Section 49-A shall be exercisable notwithstanding that the scheme, if any, settled, or deemed under this Act to have been settled for the institution contains provision to the country."

43. Therefore the power to constitute a Board and the power to make appointments to such Boards, do not depend upon the absence of any scheme. If a scheme is in existence, the appointments cannot be made from out of the list of persons sent by the District Committee, in view of the bar contained in Section 7-A(5). In other words, the appointments in such cases should be made otherwise than by nominating persons from such a list. The bar under Section 7-A(5) goes only so far and no further. If there is no scheme in existence, the power to appoint is curtailed by Section 7-A in the sense that the appointments are to be made only from amongst persons whose names find a place in the list sent by the District Committee.

44. In the case on hand, there is an existing scheme, settled earlier by this Court. Therefore, appointment to the Board of Trustees, cannot be made from amongst persons whose names find a place in the list sent by the District Committee. But the obligation imposed under Section 47(1)(c), upon the Joint Commissioner, to constitute a Board comprising of not less than 3 members and not more than 5 members, one of whom should be a member of the Scheduled Castes or Scheduled Tribes, is not whittled down or obliterated by Section 7-A(5). Consequently, the scheme proposed by the impugned order should necessarily provide for a composition in tune with Section 47(1) (c). But in the impugned proceedings, there is no provision for one of the Trustees to be a member of the Scheduled Castes or Scheduled Tribes. On the contrary, in the Draft Modified Scheme, proposed in the previous proceedings O.A.No.95 of 1978, there was a provision for one among the 5 Trustees to be a member of the Scheduled Castes or Scheduled Tribes.

45. Therefore, it was actually the scheme proposed in the previous proceedings that was in tune with the provisions of the Act,



while the scheme proposed in the impugned proceedings is not. Hence, the impugned proceedings are violative of the statutory provisions, though the professed object of the impugned proceedings is to bring the scheme in tune with the provisions of the Act.”

15. On a careful reading of the extracted portion of the judgment, it is seen that the bar u/s.7-A(5) for the District Committee to send the panel of names for appointment as trustees was found to be applicable at the stage of making appointments of the trustees. This Court held that if a scheme is in existence, the appointments cannot be made from out of the list of persons sanctioned by the District committee in view of the bar contained u/s.7-A(5) of the Act. In such cases, the appointments should be otherwise than by nominating persons from such a list. If the temple is not governed by a scheme, the provisions of Section 7-A of the Act makes it clear that the appointments will be made only from amongst persons whose names find place in the list sanctioned by the District Committee. This Court after having understood the scope of the provision, ultimately applied to the facts of the case and held that, that was a case where the temple was governed by an existing scheme, which was settled by this Court. Therefore, the appointment of the Board of Trustees could not be made from amongst persons whose names find place in the list sanctioned by the District



Committee. The Court found that the existing scheme did not provide for a member from the Scheduled Castes or Scheduled Tribes and a woman member and the modified scheme that was proposed had a provision for one among five trustees shall be a Scheduled Caste/Scheduled Tribes. Therefore, the Court found that the modified scheme that was proposed in the previous proceedings was in tune with the provisions of the Act and the scheme that was proposed in the impugned proceedings was not. Hence, the scheme that was proposed in the impugned proceedings was interfered with in the light of Section 50 of the Act.

16. In the case on hand, there is only one scheme that is available as on today. That is the scheme that was framed by the Joint Commissioner in the proceedings in O.A.No.3 of 2018, dated 25.09.2019. The application filed by the petitioner for modifying the scheme is yet to be decided by the Joint Commissioner. Now that the petitioner has already approached the Joint Commissioner, there is no need for this Court to go into the *suo motu* power that is available to the Joint Commissioner since the Joint Commissioner is already considering the petition filed by the petitioner. Till the Joint Commissioner ultimately decides the application filed by the



petitioner seeking for modification of the scheme, there is no scope for calling for a list from the District Committee in view of the bar u/s.7-A(5) of the Act. As a consequence, the appointment of non-hereditary trustees can only be go in line with the existing scheme. Whether the existing scheme is inconsistent with the Act is a matter that is pending before the Joint Commissioner and this Court should not be going into that issue in this writ petition. If that issue is taken up for consideration by this Court, this Court will virtually step into the shoes of the Joint Commissioner and the effect would be that the existing scheme will be modified. In view of the same, this Court does not want to get into the exercise of testing the impugned notification issued by the third respondent *qua* the provisions of the Act.

17. In the light of the above discussion, this Court holds that there is no ground to interfere with the impugned notification issued by the third respondent at this stage and thereby preempt the decision that is going to be taken by the Joint Commissioner in the proceedings pending in O.A.No.1 of 2023. The appointment of non-hereditary trustees shall be made as per the terms of the existing scheme. Ultimately, if the existing scheme is modified, it goes without saying that the appointments will be made in line with the



modified scheme. The temple is now under the administration of the fit person. It cannot continue to be administered by a fit person since that is only a temporary arrangement and ultimately, the temple has to be administered only by trustees. Hence, this Court cannot allow the fit person to continue to administer the affairs of the temple till the disposal of the application filed by the petitioner, which is pending before the Joint Commissioner in O.A.No.1 of 2023.

18. The Joint Commissioner/third respondent is directed to proceed further to hear O.A.No.1 of 2023 by affording an opportunity to all parties concerned and a final order shall be passed within a period of twelve (12) weeks from today. It is made abundantly clear that the order passed in this writ petition and the observations made by this Court shall not in any way influence the Joint Commissioner and the Joint Commissioner shall deal with the petition on its own merits and in accordance with law and pass final orders.

This Writ Petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.



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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

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N.ANAND VENKATESH, J

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