BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.14287 of 2012
and
M.P.(MD).No.1 of 2012

Sri Vanamamalai Mutt
through his power agent,
Sri.P.Ramasubramanian,
having office at,
Sri Vanamamalai Mutt, Nanguneri,
Tirunelveli District. ... Petitioner

(Petitioner name substituted vide Court Order dated 18.04.2022 in W.M.P.(MD).No.5402 of 2022 in W.P.(MD).No.14287 of 2012).

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Tirunelveli.

2.The Public Information Officer / Manager,
Office of Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Tirunelveli. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the order issued by the respondents dated 26.09.2012 in his proceedings in Na.Ka.No.8280/2012/அ3 26.09.2012 sent by the first respondent signed by the second respondent and quash the same.

For Petitioner	:	Mr.V.Ramakrishnan
For Respondents	:	Mr.R.Ragavendran, Government Advocate.

ORDER

This Writ Petition is filed to quash the order dated 26.09.2012 passed by the first respondent signed by the second respondent. Through the impugned order the petitioner Mutt was directed to furnish information, which were sought under Right to Information Act. The contention of the Mutt is that Mutt is not coming within the definition and hence the Right to Information Act is not applicable to the Mutt.

2. The petitioner Sri Vanamamalai Mutt popularly referred as "Aacharya Peedam" and the same was established more than 500 years ago. The Mutt is supervising and managing besides propounding, propagating and practicing various kinds of rites and rituals in a large number of Vaishnavite Temples. The

contention of the petitioner is that the Mutt is a "religious institutions." The said institution is not a public authority as defined under the provisions of Section 2(h) of the Right to Information Act, 2005. Moreover, under Section 44 of HR and CE Act, the provisions of the HR and CE Act from Sections 45 to 58 is not applicable to any Mutt. Under these circumstances, the second respondent without any authority through communication dated 05.07.2012 addressed to the Public Information Officer / Manager of Mutt calling upon to furnish information sought by one S. Marshal Michael, who is a resident of Kalakadu, Tirunelveli District. It has been stated in the said communication that the Head of the Institution is the Public Information Officer, by virtue of circular of the Commissioner of the HR and CE Department in N.K.No. 50838/2008/K4 dated 24.04.2012. Based on the said circular, a direction was given by the second respondent to furnish certain information sought for by the said Marshal Michael. In pursuance of the said communication, in the capacity of power agent of His Holiness Sri Jeer Swamiyal, the petitioner had furnished a reply dated 13.07.2012 highlighting the fact that Sri Vanamamalai Mutt at Nanguneri is not a public authority and not an institution under the control or management of the Tamil Nadu Hindu Religious and Charitable Endowments Department. Moreover, the provisions of Right to Information Act are not applicable to the said Mutt. Subsequently, the second respondent through communication dated 24.07.2012 referred to the said circular, again calling upon the Mutt to furnish the information. Aggrieved over the same, the present Writ Petition is filed.

3. The contention of the petitioner is that as per definition clause 2(h) under Right to Information Act, the petitioner will not fit in any of the body that has been stated in the definition. The said definition is extracted hereunder:

> *(h) "public authority" means any authority or body or institution of self-government established or constituted— (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;*

The Mutt is not authority or body or institution of self-government established or constituted either by the Constitution. The Mutt is not established by any law made by the Parliament or by the State Legislature, nor by any notification issued or order made by appropriate Government. The Mutt is not a body owned controlled or substantially financed by any Government and not a non-Governmental organization substantially financed directly or indirectly by any funds provided by any appropriate Government. The Mutt is not coming under any of the body as stated supra.

4. The respondents relied on the circular issued by the Commissioner HR &CE, but the said circular is applicable to the Temples and not to the Mutt. The said Circular specifically ordered in respect of temples which are under the control of HR&CE with hereditary trustes and also the temples which are managed under scheme, the trustees of the said temples shall be appointed as Public Information Officer or Assistant Information Officers. In the said Circular there is no reference to any Mutt.

5. Under Section 44 of the Act, where it has excluded the applicability of the provisions of Sections 45 to 58 of the Act. Sections 45 to 58 are the powers granted to the Joint Commissioner and other authorities of HR and CE Department. When the powers of the Joint Commissioner and other authorities are clearly excluded under those Sections, then the authorities have no power to direct the petitioner to obey the orders of the respondents. Therefore, the said impugned communication is beyond the purview of the Act.

6. The learned Government Advocate vehemently opposed and submitted that the circular was issued under Section 27 of the Act and any lawful direction, the Mutt is bound to obey. This Court is of the considered opinion that when there is no authority under Section 44, then Section 27 cannot be invoked. Moreover, the provisions of the Act will prevail over the circular.

7. The learned counsel appearing for the petitioner relied on the judgment rendered by Kerala High Court in the case of *A.C.Bhanunni @ Valluvanattukara and Others Vs The Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department and Others* reported in *2011 Supreme (Ker) 240* and the relevant portion is extracted hereunder:

> *20.This takes us to the further submission of the learned Senior Government Pleader that the temples to which HR & CE Act applies are public temples and the Temple Advisory Committees are public authorities for the purpose of the RTI Act since they are constituted as per the statutory provisions in HR & CE Act and it needs to be ensured that they are amenable to the provisions of the RTI Act as they are predominantly involved in raising funds by collection from public, for the purpose and matters in connection with the temples. The Temple Advisory Committees are conceived and constituted in terms of the statutory provisions. Section 14 of the HR & CE Act provides that Temple Advisory Committees may be constituted for each temple, not inconsistent with the existing custom and practices, for the purpose of ensuring*

adequate participation of Hindu devotees. Therefore, the provision is only an enabling one and the purpose of such a provision is to generate adequate participation of Hindu devotees. It is further provided that the composition of the Temple Advisory Committee shall be in such manner as may be prescribed and the Committees formed under that provision shall be approved by the Board. Therefore, the Temple Advisory Committee is not an extended limb or office of the MDB (Malabar Devaswom Board). It is also not constituted by the MDB, but gets constituted as a committee ensuring adequate participation of Hindu devotees. That process shall not be inconsistent with any existing custom or practice. A committee so constituted shall be approved by the Board. This is the provision in sub-section 2 of Section 14 of the HR & CE Act. Such provisions are insufficient to make any Temple Advisory Committee fall within the definition of "public authority" in Section 2(h) of the RTI Act, by virtue of its constitution and composition. Now, the question would be regarding the funds. ***Managing or dealing with funds collected from public is not, by itself, a statutory indicia to classify any authority or body or institution as a public authority under Section 2(h) of the RTI Act. There is substantial difference between the concept of funds raised by collection from public contribution and funds provided by the appropriate Government.*** *The quality of funds generated by collection from public can never be treated as part of funds provided by the appropriate Government. Therefore, a clear distinction has to be maintained between those two concepts and every temple or institution in relation to the affairs of which funds are collected from the public cannot, by that reason alone, be brought within the definition of "public authority" under Section 2(h) of the RTI Act which applies to establishments which are substantially funded, directly or indirectly, by funds provided by the appropriate Government. Whether a temple is a public temple or not is also not decisive.*

21.Having regard to the reasons aforesaid, the Hindu public religious institutions and endowments to which the HR & CE Act applies are not public authorities as defined in the RTI Act and the provisions of that Act do not apply to those institutions and their offices, officers and employees and Executive Officer, if any appointed by the Commissioner of MDB under section 66 of the HR & CE Act. In the result, these writ petitions succeed. Accordingly, they are allowed quashing the orders and decisions impugned therein. No costs.

8. The Learned Single Judge of this Court has elaborately dealt with the provisions of the Act in W.P.No.16567 of 2021 dated 01.10.2021 and the relevant portion of the order is extracted hereunder:

52.The scheme of the Act is evidently for the State to retain only peripheral interest over the working of Mutts and specifically step in when the functioning of the Mutt is threatened by reason of the Head of the Mutt being unable to effectively discharge his functions and duties. The elimination of critical control areas such as appointments and regulation of funds from the purview of State control is in sharp contrast to the tight control exercised by the State over other religious institutions, including temples.

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55.I have in the preceding paragraphs set out in detail the statutory provisions that would govern the management and administration of the mutts. While Mutts satisfy the definition of religious institution in terms of Section 6(18), and the intention of the State to oversee some aspects of his functioning cannot be disputed, the degree of control that is assumed is clearly limited in application.
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60.In S.Suresh v. Central Public Information Officer (2020 SCC Online CIC 214), the Central Information Commission considered and rejected the case of an appellant who had sought information in regard to the Sri Vedapureeswarar and Sri Varadarajaperumal Devasthanams, relying upon the Judgment of the Hon'ble Supreme Court in the case of Thalappalam Service Cooperative Bank and the High Court of Telungana in the G.Rajenderanath Goud, and concluding that the institution did not satisfy the definition of 'public authority' under the RTI Act.

61.A contra view has been taken by a learned Single Judge of this Court in the case of Hereditary Trustee, Sri Vengeeswarar Alagarperumal and Nagathamman Koil Devasthanam vs. Commissioner, HR&CE, (WP.No.28960 of 2019 dated 20.12.2019). By way of a short order, this Court held that a temple is a public institution and merely because it was administered by a hereditary trustee the public aspect of a character will not disappear. The Court noted that public conclusions were being made for conducting various activities of the temple and the State Government also spends significant amount for administration of the department to manage the temples. This decision relates to a temple and is inapplicable to a Mutt. In any event, neither relevant cases nor the schemes of the HR&CE and RTI Acts have been put forth and discussed in that case.

65.The office of Madathipathi and hereditary trusteeship thus converge into a single role and functionality. A Madathipathi is, in effect, a corporation sole, an independent entity with a common ideal and with perpetual succession. By its very nature, by virtue of the unique *functions it discharges as well as the duality of the roles played by the Madathipathi, a Mutt does not assume the character of a public authority amenable to the provisions of the RTI Act. (See Vidyapurna Thirtha Swami, Minor By Next Friend Vyasacharya Vs Vidyanidhi Tirtha Swami (Died) (1904 (1) MLJ 105).*

66. The expansive nature of activities engaged in by a Mutt today as well as the substantial resources that many of them enjoy necessitates some form check upon the management and deployment of resources. Thus, though the Mutts cannot be called upon to furnish information to any and all interested persons, some amount of responsibility cannot be shied away from and the petitioners, to this extent, fairly agree. Queries or clarifications sought for by statutory and other public bodies and authorities in relation to secular aspects of the functioning of the Mutt, have to be responded to, and the required particulars must be furnished by the Mutt as and when called for. The line of distinction between what constitutes secular/temporal on the one hand, and religious/spiritual on the other, is fine, and is best left to the judgement of the respective Mutts to decide and convey to the authorities, if and when queries/clarifications are sought.

9. Another learned Single Judge of this Court has also dealt with by referring the earlier judgment in W.P.(MD)No.13670 of 2021 dated 04.07.2022, wherein it is held that the distinction between the secular and religious activities of the mutts may not be determinative of the issue posed for consideration. Even if the Mutt is engaged in secular activities, then the respondents have no power to direct the Mutt to obey the orders. More so, they

are not coming under the purview of the RIT Act, 1995. The relevant portion of the order is extracted hereunder:

> *8.A learned Judge of this Court vide order dated 01.10.2021 in W.P.Nos.16567 of 2010 etc., had also taken the same view. The learned Judge more particularly held that mutts are not public authorities for the purpose of Right to Information Act, 2005. I should have straightway allowed the writ petition by following the aforesaid decision. However, the learned standing counsel for the respondents 2 and 3 drew my attention to Paragraph No.66 of the said order and wanted me not to grant declaratory relief in absolute terms. The said para is as follows:-*
>
> > *"66. The expansive nature of activities engaged in by a Mutt today as well as the substantial resources that many of them enjoy necessitates some form check upon the management and deployment of resources. Thus, though the Mutts cannot be called upon to furnish information to any and all interested persons, some amount of responsibility cannot be shied away from and the petitioners, to this extent, fairly agree. Queries or clarifications sought for by statutory and other public bodies and authorities in relation to secular aspects of the functioning of the Mutt, have to be responded to, and the required particulars must be furnished by the Mutt as and when called for. The line of distinction between what constitutes secular/temporal on the one hand, and religious/spiritual on the other, is fine, and is best left to the judgement of the respective Mutts to decide and convey to the authorities, if and when queries/clarifications are sought."*
>
> *With the greatest of respect to the Hon'ble Judge, I may add that the distinction between the secular and religious activities of the mutts may not be determinative of the issue posed for consideration. The relief sought for in this writ*

> *petition hinges on whether the mutt is a public authority as defined in the RTI Act. Once the answer is in the negative, declaration has to be granted as a matter of course. When once Dharmapuram Adheenam or its constituent religious institutions are held to be not "public authorities" for the purpose of The Right to Information Act, the consequence is that the writ petitioner or its constituent religious institutions cannot be directed to furnish any information at the instance of the Information Commission. They are also not required to appoint any Information Officer.*

10. Therefore, following all these judgments, this Court is of the considered opinion that the impugned order is beyond the jurisdiction of the respondents. The Mutt is not covered under the definition of "Public Authority". Hence, the impugned order is liable to be quashed and accordingly it is quashed.

11. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Tirunelveli.

2.The Public Information Officer / Manager,
Office of Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Tirunelveli.

S.SRIMATHY, J.

Nsr

W.P.(MD).No.14287 of 2012

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