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Review Application (MD) No.22 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 01.09.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE P.D.AUDIKESSAVALU

Review Application (MD) No.22 of 2023

T.Balaji Krishnaswamy

.. Petitioner

Vs.

1.State of Tamil Nadu represented by
its Chief Secretary,
Fort St.George,
Chennai.

2.State of Tamil Nadu represented by
its Principal Secretary,
Department of Tourism, Culture and
Religious Endowment,
Chennai.

3.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Chennai.

.. Respondents



Review Application (MD) No.22 of 2023

Review Application filed under Order 47 Rule 1 & 2 r/w Section 114

CPC, against the order dated 22.11.2021 passed in W.P.No.20163 of 2021.

For Petitioner : Mr. K.Prabakaran

For Respondents : Mr. T.Sampath Kumar,
Government Advocate (for R1 & R2)

Mr. N.R.R.Arun Natarajan,
Special Government Pleader (for R3)

ORDER

[Made by P.D.AUDIKESSAVALU, J.]

Heard Mr. K.Prabakaran, Learned Counsel for the Petitioner, Mr. T.Sampath Kumar, Learned Government Advocate appearing for the First and Second Respondents and Mr. N.R.R.Arun Natarajan, Learned Special Government Pleader appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner filed the Public Interest Litigation in W.P. (MD) No. 20163 of 2021 seeking a direction to the Third Respondent to give



effect to Section 25-A(d) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act' for short) by receiving affidavits from individual persons who seek to be appointed as Trustees for public temples and upload the same into the website as contemplated under Section 4(2) of the Right to Information Act, 2005. The Co-ordinate Bench of this Court by order dated 22.11.2021 dismissed the said Writ Petition and the Special Leave Petition in Petition for Special Leave to Appeal (C) No. 2698 of 2022 filed by the Petitioner against that order was dismissed on 11.04.2022 by the Hon'ble Supreme Court of India. The Petitioner has thereafter on 28.04.2022 filed this Application for review of the order dated 22.11.2021 in W.P. (MD) No. 20163 of 2021 passed by the Co-ordinate Bench of this Court relying on the decision of the Hon'ble Supreme Court of India in ***Kunhayammed -vs- State of Kerala*** (2000) 6 SCC 359], where the legal position has been summarized as follows:-

“44.

(iv) *An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing*



special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

- (v) *If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special*



leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

- (vi) *Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.*
- (vii) *On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.”*

3. In the meanwhile, a batch of Writ Petitions in W.P. Nos. 32601 and 32623 of 2019, W.P. (MD) 21018, 21024 and 22796 of 2021, W.P. Nos. 9437, 13107 and 18431 of 2022, W.P. (MD) No. 18431 and 4714 of 2022, Contempt Petition No. 2699 of 2022, W.P. No. 18431 of 2022, W.P.



No. 23560 of 2023 relating to appointment of Trustees to various Temples under the control of the Hindu Religious and Charitable Endowments Department of the Government of Tamil Nadu have been heard by this Division Bench and certain directions have been issued from time to time regarding the manner in which the selection process would have to be carried out by the concerned authorities. The applicability of the provisions of the Right to Information Act, 2005, to the process of selection of Trustees, which is sought to be canvassed in W.P. (MD) No. 20163 of 2021 appears to be a matter that requires due consideration by this Court along with the said batch of cases. In that backdrop, as the dismissal of the Writ Petition in W.P. (MD) No. 20163 of 2021 is likely to be an impediment to have complete and effectual adjudication of the said batch of cases, this Court is of the considered view that the order dated 22.11.2021 passed in W.P. (MD) No. 20163 of 2021 requires to be set aside to meet the ends of justice.

4. In view of the foregoing discussion, the order dated 22.11.2021 in W.P. (MD) No. 20163 of 2023 passed by the Co-ordinate Bench of this Court is set aside and that Writ Petition is restored to file to be heard along



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with W.P. Nos. 32601 and 32623 of 2019, W.P. (MD) 21018, 21024 and 22796 of 2021, W.P. Nos. 9437, 13107 and 18431 of 2022, W.P. (MD) No. 18431 and 4714 of 2022, Contempt Petition No. 2699 of 2022, W.P. No. 18431 of 2022, W.P. No. 23560 of 2023 on merits and in accordance with law.

In the upshot, the Review Application is ordered on the aforesaid terms. No costs.

[R.M.D., J.] [P.D.A., J.]
01.09.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No

Note: Registry is directed to list the Writ Petition in W.P. (MD) No. 20163 of 2021 along with W.P. No. 32601 of 2019 etc., batch.

nsd

To

1.The Chief Secretary,
Fort St.George,
Chennai.

2.The Principal Secretary,
Department of Tourism, Culture and Religious Endowment,

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Chennai.

3. The Commissioner,
Hindu Religious and Charitable Endowment Department,
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R.MAHADEVAN, J.
AND
P.D.AUDIKESSAVALU, J.

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