BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.15234 of 2023
and
W.M.P.(MD)Nos.12843 and 12844 of 2023

S.Ramasamy ... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.

3.The Executive Officer,
Arulmigu Silambani Vinayagar Temple,
Devakottai. ... 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 of the 2nd respondent in S.M.Na.Ka.No.37002/2023/SVG/அ5, dated 12.05.2023 in respect of appointment of fit person for Arulmigu Sivan Koil, Alavakottai and the consequential proceedings of 3rd respondent dated 26.05.2023 and to quash the same.

For Petitioner	:	Mr.S.Manohar
For R1 & 2	:	Mr.S.P.Maharajan Special Government Pleader
For R3	:	Mr.P.Subbaraj

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ORDER

This writ petition is filed for writ of ***Certiorari,*** to quash the impugned order dated 12.05.2023 passed by the 2nd respondent in respect of appointment of fit person for Arulmigu Sivan Koil, Alavakottai and the consequential proceedings of 3rd respondent dated 26.05.2023.

2. The contention of the petitioner is that Arulmigu Sivan Koil, Alavakottai was managed and administered by S.A.R. Family for more than a century and the HR and CE Department has never interfered in the administration of the temple. There are three temples in Alavakottai Village, namely Arulmigu Sri Sivan temple which is administered by Sinnan Chettiar family, Arulmigu Sri Perumal temple is administered by Pillappa Chettiyar family and Arulmigu Sri Murugan temple is administered by Iluppakudi

Nagarathar. The temple Arulmigu Sri Sivan temple is administered by the three brothers namely Narayanan, Chidambaram and Sinnan Chettiar and they have performed Kumbabishekam for the said temple along with one Ramanathan Chettiar, who is the uncle of the petitioner. The petitioner's family also had taken effort to have Agraharam and Nandavanam for the temple and also the road was laid by the family. The last Kumbabishekam was perfromed on 06.03.2009. The petitioner was authorized to look into the Kumbabishekam affairs from 24.01.2007 onwards. All these factors would indicate that the petitioner's family is also paying the Archaka and all other staffs. Till date, approximately Rs.40,000/- has been spent by the petitioner and his family members towards the temple administration and poojas. The inscription in the temple, dated 04.09.1924 establishes that the petitioner's family is managing the temple.

3. While that being so, the 3rd respondent has issued the impugned notice, dated 26.05.2023 enclosing the proceedings of the 2nd respondent, dated 12.05.2023 stating that a fit person has been appointed and directed to hand

over the charge of the temple to the said fit person. The contention of the petitioner is that the appointment of the fit person was violative of principles of natural justice. Hence, the petitioner is before this Court.

4. The learned Special Government Pleader appearing for respondents 1 and 2 submitted that the Tamil Nadu Government has taken initiation to appoint fit person to all temples. Based on the common circular steps were taken to appoint fit person to the present temple as well. Moreover, it is also mandated to appoint non-hereditary trustees for the temples, however the same would take time and hence in the interregnum period fit persons would be appointed. Based on the same the present fit person is also appointed. The Learned Special Government Pleader submitted that the appointment is based on the Circular and hence notice is not necessary, hence, there is no violation of principles of natural justice.

5. After hearing the submissions of both sides this Court had given its anxious consideration. It is seen that the present temple is being

administered for more than a century by the petitioner's family. When an administration is subsisting then the respondents is not having any power to interfere with the administration of the temple. Moreover, there is no allegation of any maladministration or misappropriation or any other allegations, then Fit Person cannot be appointed. Even if there is any allegation then also the respondents ought to issue notice to the existing management, then only such decision can be taken. When there is no allegation of any sort, then the appointment of Fit Person is illegal. In the present case no such notice was issued before appointing the Fit Person, thereby the appointment is violative of principles of natural justice. Even for appointing Executive Officer, non-hereditary trustees notice ought to be issued to the existing management and notice is mandatory. The appointment of fit person also needs notice before appointment.

6. This Court has considered the appointment of Fit Person in W.P.(MD)No.22398 of 2023 and the relevant portion of the order is extracted hereunder:

"5.The power to appoint a fit person vests in the Assistant Commissioner, as per Section 49. The power shall be exercised on two contingencies, firstly the institution must be a religious institution and secondly, on satisfaction of any mal-administration of the institution by the existing trustees. In the present case while appointing a fit person, the Assistant Commissioner has not issued any notice, not conducted any enquiry. The Assistant Commissioner has to conduct the enquiry by following due procedure, that is, recording evidence and thereafter, pronouncing a decision under Section 63 of the Act. If any party is aggrieved, they can file an appeal and thereafter, a suit, but without following the said procedure, straight away, the second respondent has assumed jurisdiction and appointed a fit person in an illegal manner. The Hon'ble High Court in the case of R.Shanmugasundram Vs. Commissioner of HR & CE (1991 2 MLJ 582), had specifically held that power under Section 49 to appoint a fit person cannot be exercised before determination of the issue under Section 63 of the Act of 1959. The respondent ought to issue show cause notice specifically alleging mal-administration and call for objections, record evidence and then conduct enquiry, thereafter pass orders. Thus, there was neither any specific allegation of mal-administration nor any recording of subjective satisfaction. Hence the appointment of fit person is illegal and the impugned order is quashed."

7. This Court has elaborately dealt with the appointment of Fit Person in W.P.(MD)No.21734 of 2023 vide order dated 11.09.2023 and in W.P.(MD) No.13749 of 2014 vide order dated 21.09.2023 after referring to the following judgments:

a. W.P.(MD)No.20915 of 2013 dated 30.09.2015 in Arulmigu Angala Eswari Amman Temple Vs. Commissioner.

b. N.Sivasubramanian Vs. Government of Tamil Nadu reported in 2006 (2) CTC 49.

c. Arulmigu Athanoorammal Podarayasamy Vs. Assistant Commissioner HR & CE (Admn) Department reported in CDJ 2012 MHC 3783.

d. R.R. Thirupathy and others Vs. Commissioner Hindu Religious and Charitable Endowment reported in (2015) 3 LW 106.

e. H.H.Sankarachari Seamigal Kanchi Kamakodi Peetam Vs. Government of Tamil Nadu in W.P.No.23096 of 2013 dated 12.02.2020.

f. Sri Ram Samaj Vs. Commissioner HR & CE reported in 2022 (4) MLJ 449.

e. Solaimuthuraja Vs. Commissioner HR & CE reported in 2010 (2) CTC 289.

f. R.Shanmugasundram Vs. Commissioner of HR & CE (1991 2 MLJ 582).

From this it is evident that consistently the High Court has held that the power can be used when the allegations are established.

8. In the writ petition filed in W.P.(MD)No.21734 of 2023 this Court has considered the issue of appointing Fit person vide order dated 11.09.2023

and has held as under:

"13. The Learned Counsel appearing for the petitioner submitted that the respondents are appointing Fit person or Executive Officer based on the judgment dated 07.06.2021 of the Hon'ble Division Bench rendered in Suo Moto W.P.No.574 of 2015. Consequently, the Commissioner HR&CE had issued Circular to appoint Fit person or Executive Officer in all the temples. The relevant portion of the said judgement is extracted hereunder:

TRUSTEE

(54) The HR&CE Department shall file a report before this Court within a period of eight (8) weeks listing out the number of temples without Trustees, the duration of such vacancy, the particulars of the persons appointed as "Fit Person" and the steps taken by the Department to appoint trustees.

(55) If no hereditary trustees stake claim, then steps must be taken to appoint non-hereditary trustees. The non-hereditary trustees must be from the religious denomination, to which the temple belongs to, without the political background.

(56) Stringent rules on the conduct, character, interest and knowledge

on both religious affairs as well as administrative abilities of the trustees, must be enacted to ensure that the right person is appointed to manage the religious affairs of the temples.

(57) Keeping in mind that the overall administration shall be with the HR&CE Department, the authorities shall supervise the affairs of the religious institutions ensuring that the HR&CE Act is strictly complying with by the trustees and taking necessary remedial steps for which they are paid an annual contribution as specified under Section 92.

But the Learned Counsel appearing for the 2nd respondent submitted that the Commissioner had issued such Circular based on the said Judgment, but in the present case the Fit person was appointed was appointed on 08.06.2018, which is prior to the judgment or the Circular stated supra. Be that as it may, it is seen that the respondents are appointing indiscriminately without any basis. The Hon'ble Division Bench had directed to appoint Fit Person or the Executive Officer where ever there is no Trustees. But the respondents are trying to appoint Fit person and Executive Officer by somehow the trustees and the same cannot be entertained.

14. The aforesaid judgments, conclusively in unequivocal terms had laid down:

(i). That the respondents should subjectively satisfy based on the

evidence, facts and circumstances of the case that it is necessary to appoint Fit person or Executive Officer for the management of temple.

(ii) That the respondents should issue notice to the existing management before appointing the Fit person or Executive Officer.

(iii) That the respondents shall appoint the Fit person or Executive Officer for the limited period only and the tenure ought to be indicated in the appointment order of Fit person or Executive Officer.

(iv) That the respondents should hand over the management to the temple at the earliest.

(v) That the respondents may appoint Fit person or Executive Officer where ever there are no Trustees

(vi) That the respondents shall not artificially create a situation in order to usurp the management.

15. In the present case, there is no allegation of misappropriation and mismanagement of temple and there is no subjective satisfaction to this effect. The respondents have not issued any prior notice for appointing the Fit person. The respondents have not mentioned any tenure for appointing the Fit person. Therefore, the appointment of Fit person is *illegal and the impugned order is quashed.*

16. The petitioner is at liberty to file appropriate petition / suit to management the and the same shall be filed within a period of four weeks.

17. With the above observations and directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, miscellaneous petitions are closed.

18. Before parting with the judgment, this Court is bound to record that the administration of temples are being carried out by the people. If the same is disturbed then the people would be forced, either to litigate or remain jobless. In either way the Government or the respondents ought to face the same. If litigation then the Courts would be flooded with litigation against the respondents. If to remain jobless then it would be devil's mind, which would be creating ruckus and the Government would be forced to handle the same. Therefore, the Government and respondents ought to show some restrain before appointing Fit person or Executive Officer. They cannot mechanically appoint Fit person or Executive Officer."

9. In the present case absolutely there is no allegations whatsoever and in such circumstances the appointment of fit persons is illegal. Therefore, the impugned order is liable to be quashed and accordingly, the impugned order is quashed.

10. With the above said observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

11.09.2023

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

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To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.

S.SRIMATHY, J.

Tmg

W.P.(MD).No.15234 of 2023

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