



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.13749 of 2014
and
M.P(MD)Nos.1 & 2 of 2014
and
W.M.P(MD)No.18126 of 2023

Krishnasamy Nadar (Died)

Ramesh Nadar

... Petitioner

[This petitioner is substituted as per Order of this Court, dated 21.09.2023]

Vs.

1. The Commissioner,
Hindu Religious Charitable and Endowments Department,
Chennai-34.
2. The Joint Commissioner,
Hindu Religious Charitable and Endowments Department,
Tirunelveli.
3. The Assistant Commissioner,
Hindu Religious Charitable and Endowments Department,
Thoothukudi-2.



WEB COPY

4. The Executive Officer,
Arulmigu Povanatha Swamy Thiru Kovil,
Kovilpatti,
Thoothukudi District.

... 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 on the file of the 1st respondent in his proceedings in order in D.Dis.R.P.95/2013 (D2), dated 18.03.2014 and quash the same.

For Petitioner : Mr.Muthuganesapandian

For Respondents : Mr.S.P.Maharajan,
Special Government Pleader, for R-1 to R-3

: No appearance for R-4

ORDER

This writ petition is filed for ***Writ of Certiorari***, to quash the impugned proceedings, dated 18.03.2014, passed by the 1st respondent, wherein the respondent had appointed Fit Person.

2. Heard Mr.Muthuganesapandian, the Learned Counsel appearing for the Petitioner, Mr.S.P.Maharajan, the Learned Special Government Pleader



WEB COPY

appearing for the respondents 1 to 3 and perused the material documents available on record.

3. The contention of the petitioner is that the Arulmigu Kamatchiamman Thiru Kovil, situated at Keelaeral, Thoothukudi District is a Private temple and its neither registered nor notified under Section 71 of HR & CE Act. The group of families of Nadar Community, namely Poosari Nadar, Mandhiri Nadar, Kathavan Nadar, Karuppan Nadar, who hails from Keela Eral village alone manages the temple. The said temple was constructed by their ancestors and there is no idol worship in the temple. In the name of Kamatchiamman Thirukovil, a Vilakku has been lighted and that is being worshipped by the ancestors of the said four group of family members. The respondents have visited the temple and inspected on 16.03.2012 and subsequent to his visit, a communication, dated 23.04.2012 was issued directing the petitioner to rectify the defects. The defect states to obtain an order to manage the temple by Nadar, to install lightning arrester, to affix the HR&CE seal in the Hundi and various other defects.



WEB COPY

4. The contention of the petitioner is that in the said communication has not stated that there is no mismanagement. The petitioner after receiving the same had submitted a representation, dated 12.06.2012 to the 3rd respondent and stated that they have removed the two Hundials and making arrangements to install lightning arrester and in addition to that they have assured to cooperate with the department. The contention of the petitioner is that the four families have worshipped the family deity, moreover there is no idol and there is no finding to the effect that there is mismanagement. Therefore, the respondents are not having any power to appoint any Fit person when there are no grounds to appointment any Fit person.

5. The further contention of the petitioner is that for appointment of the Fit person, the respondents ought to be pass an order stating the reasons for appointing the Fit person. The respondents have not narrated any facts or reasons for appointment of any Fit person. As rightly pointed out by the petitioner there is no proceedings alleging mismanagement in the temple. None of the provisions stated in the HR & CE Act has been followed, before appointing of the Fit person.



WEB COPY

6. The Learned Special Government Pleader appearing for the respondents submitted that the petitioner is having an alternative remedy to prefer an appeal. Further the respondents submitted that the respondents directed to affix seal of HR&CE in Hundials but the petitioner refused to affix and had removed the Hundials, which is violating the instructions of the respondents. Moreover, the petitioner is not increasing the rent periodically to the shops. The petitioner has deposited more than Rs.3.5 lakhs in the bank which is the income from the temple for the past six months and has misappropriated the amount. Thereby there is misappropriation of amount and hence fit person is appointed. Therefore, the respondents prayed to dismiss the writ petition.

7. The allegation of misappropriation is denied by the petitioner and submitted that the temple is not fetching regular consistent income. In some months, there will be more income, in some months, there will be less income. But the expenses for every month would neither reduce nor increase, but it has to be met out from the income of the temple. Hence the petitioner would maintain



WEB COPY

some reserve amount in the bank, which cannot be termed as misappropriation.

The respondents have noticed the income alone but has not mentioned about the expenses at all. Hence the allegation of misappropriation is false.

8. After hearing the rival submissions of the parties this Court is of the considered opinion that the respondents are just like that throwing the allegation of misappropriation without knowing the consequences of the said allegation. As rightly pointed out by the petitioner the respondents failed to take the expenses and maintenance of the temple. Since the petitioner had deposited Rs.3.5 lakhs that does not mean the petitioner had misappropriated. Infact the petitioner submitted that further construction was carried out from the income and donation of the temple. The temple ought to be maintained every month, but the income is not consistent and it is prudent to reserve some amount and that is what has been carried out by the petitioner. Therefore, this Court is of the considered opinion the allegation of misappropriation is criminal in nature. In the present case the respondents have not issued any proper notice indicating the nature of misappropriation and the evidence of misappropriation. The respondents have just



WEB COPY

like that thrown allegations of misappropriation and the sole purpose is to usurp the management of the temple.

9. As far as the allegation of affixing HR&CE seal in hundial is concerned, the respondent would bring the temple under its control whenever there are hundials. Since the petitioner is claiming that the temple belongs to the four families of Nadar community and hence it is denomination temple. If there is a claim of denomination temple then the petitioner is bound to file a petition / suit to recognize his right as denomination temple. But as of now there is no such petition / suit filed or pending. Therefore, the petitioner is at liberty to file a petition / suit to recognize his right as denomination temple.

10. As far as the allegation of removing the hundials are concerned, the claim of the petitioner is that if hundial is available then the respondents would deny their right of management and hence he would opt for removing the same. Therefore, this Court is of the considered opinion the management has



WEB COPY

prerogative right either keep hundial or remove hundial. The respondents cannot insist the temple management to keep the hundial. It is made clear if Hundial is available then the Department has right to affix seal and the department cannot insists to keep hundial so as to affix its seal.

11. As far as the appointment of Fit person is concerned. it is seen that the respondents have not issued any notice before appointing the Fit person. Therefore, there is violation the principles of natural justice. Whenever there is violation of principles of natural justice then writ petition is maintainable. Hence, the respondent's plea of alternative remedy cannot be entertained. Therefore, this Court is inclined to interfere with the impugned order passed by the respondents.

12. As far as the appointment of Fit persons is concerned, the petitioner has relied on several judgments. In W.P.(MD)No.20915 of 2013 dated 30.09.2015 in Arulmigu Angala Eswari Amman Temple Vs. Commissioner and others, wherein the Court has held as under:



WEB COPY

“28. In the case on hand, the second respondent without giving notice to the petitioner or to other trustees straight away issued the impugned order appointing the 3rd respondent as fit person vesting all the powers of the trustees, which action has got civil consequences. As held by the Apex Court in the decision cited supra, when the rights of the parties are likely to be affected by virtue of his action in appointing the Executive Officer as fit person, it is incumbent on the part of the second respondent to issue notice to them, for the compliance of principles of natural justice. Therefore, this Court is of view that the failure on the part of the second respondent in not issuing notice to the petitioner as well as to other trustees vitiates the impugned order dated 26.11.2013.

29. Further, the order appointing a fit person should be a speaking order and should disclose the reasons as to why the authority namely, Assistant Commissioner, was of the opinion that the affairs of the temple were not conducted in accordance with the provisions of the Act and there was a need for immediate appointment of a fit person. In the impugned order, there is absolutely no reason has been shown for appointing the third respondent as fit person. It may not be necessary for the Assistant Commissioner to pass an elaborate order, but the order should speak for itself and give reasons as to why in the opinion of the Assistant Commissioner, the power under Section 49(1) of the Act was exercisable. In the absence of reasons for appointment of the fit person, the impugned order has to be necessarily held to be a non-speaking order and therefore, the order impugned was passed in violation of the principles of natural justice and hence, the same is set aside.”

13. In the case of N. Sivasubramanian vs. the Government of Tamil Nadu, represented by its Secretary, Hindu Religious and Charitable Endowment Department, reported in 2006 (2) CTC 49 it has been held as under:



WEB COPY

“11. Section 45 of the Act, even though empowers the second respondent to pass an order appointing Executive Officer, that power has to be exercised in terms of the policy of the Act. The said power shall be exercised coupled with a duty. Therefore, it is the duty of the second respondent to see as to whether the Executive Officer has to be appointed for better and proper administration of the group of temples.

12. As pointed out above, no doubt the second respondent is empowered to appoint Executive Officer under section 45(1) of the Act. But to exercise the said power, there must be a maladministration by the trustees and to find out whether there is any maladministration or not, it is the duty of the second respondent to issue notice to the trustees, hear their objections and only after prima facie satisfaction of the maladministration, the second respondent is empowered to exercise the power under section 45(1) of the Act and appoint the Executive Officer.

13. Here in this case, based on the complaint/representation given by the 6th respondent, the impugned order is passed at the instance of the 6th respondent, appointing 5th respondent as Executive Officer, but without issuing notice to the petitioner or other trustees. A perusal of the impugned order amply establishes the fact that the second respondent has not issued any notice to any of the trustees including the petitioner. The administration of the temples, particularly the denominational temples, by the trustees is a valuable right and the same cannot be lightly divested under the guise of exercising power under section 45(1) of the HR&CE Act. The impugned order having civil consequences against the petitioner and other trustees, the second respondent is bound to give notice to the petitioner and other trustees and only after hearing their objections, if any, the Executive Officer can be appointed, if the explanation submitted by the trustees are not satisfied.

14...

*15. In the case on hand, the second respondent **without giving notice to the petitioner or to other trustees straight away issued the impugned order appointing the 5th respondent as Executive Officer vesting all the powers of the trustees, which action has got civil consequences.** As held by the Apex Court in the decision cited supra, when the rights of the parties are likely to be affected by virtue of his action in appointing the Executive*



WEB COPY

Officer, it is incumbent on the part of the second respondent to issue notice to them, for the compliance of principles of natural justice. Therefore, we hold that the failure on the part of the second respondent in not issuing notice to the petitioner as well as to other trustees vitiates the impugned order dated 17.3.2005”

14. In the case of Arulmigu Athanooramam Podarayasamy Vs.

Assistant Commissioner, HR & C.E.(Admn.) Department reported in CDJ 2012

MHC 3783, it has been held as under:

“9. The contention of the learned counsel is that there were allegations of mismanagement of funds by the Trust. Therefore, it was felt necessary to appoint a fit person under Section 49 for the better management of the temple.

*10. The reading of Section 49 shows, that Joint Commissioner could exercise powers under Section 49, in the interest of public generally, keeping in view the income and the properties of religious institution, taking in view the number of worshippers and importance of religious institution as a pilgrim center or any other matter as may be prescribed. However, the reading of impugned order does not show any reason as stipulated, to appoint the fit person vide impugned order. The contention of learned counsel for respondent No.1 that appointment has been made as there were allegation of misuse of funds, cannot be accepted. **It is well settled law that a quasi-judicial order should be self-speaking order giving reasons for passing of the order. The defect in order cannot be cured by filing counter to justify the order.***

11. The impugned order is a non-speaking order as it does not disclose any ground as per Section 49 for appointing a fit person. The impugned order thus is contrary to provisions of statute, the alternative remedy of appeal therefore cannot be a bar to maintainability of this writ.”



WEB COPY

16. The Learned Counsel appearing for the petitioner relied on the judgment dated 12.02.2020 rendered in W.P.No.23096 of 2013 in the case of H.H. Sankarachary Seamigal Kanchi Kamakodi Peetam Vs. Government of Tamil Nadu, wherein it held as under:

*“17. However, as stated earlier, the respondents have **not passed a speaking order with supporting evidence to establish that (a)the management of the temple have committed financial irregularities, (b) the subject temple is a public temple, (c) no explanation given as to how the petitioner ceases to be a trustee of the temple to enable the respondents to appoint a fit person under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.***

18. For the above mentioned three reasons, this Court is of the considered view that the impugned orders passed by the third respondents violates the principles of natural justice and has not followed the due procedure contemplated under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.”

17. In the case of Sri Ram Samaj Vs. Commissioner HR&CE and others reported in 2022 (4) MLJ 449 it has been held as under:

“28. The second procedural violation is that before passing the order under Section 49 of the Act of 1959 appointing a fit person, except to record that a show cause notice was sent, reference of the allegation of



WEB COPY

mismanagement has not been given. Thus, there was neither any specific allegation of mal-administration nor any recording of subjective satisfaction. Further, such allegations should be specifically made in the show cause notice and hearing on such allegations should have been made before appointing of a fit person.

29. Therefore, we find reason to cause interference in the order passed by the learned Single Judge, who ought not to have dismissed the writ petition without addressing the issues on merit, when challenge to the order was alleging violation of the principles of natural justice and non-observance of procedure in passing the order. Ignoring the aforesaid, the writ petition was dismissed on the ground of availability of alternative remedy and involvement of question of facts, whereas challenge was on the ground of noncompliance of procedure given under Section 63 of the Act of 1959 and Chapters V and VI thereof. It is even bit by the judgment of the Supreme Court in the case of Durga Enterprises (P) Ltd. vs. Principal Secretary, Govt. of U.P., reported at (2004) 13 SCC 665. There also, the writ petition was dismissed on the ground of availability of alternative remedy after keeping the matter pending for a long period of 13 years. It was held that the High Court having entertained the writ petition and the pleadings by the parties were complete, ought to have decided the case on merit instead of relegating the parties to take the alternative remedy. We are not further entering into the issue that only on account of availability of alternative remedy, the jurisdiction of this Court under Article 226 of the Constitution of India is not barred rather in view of the judgment of the Apex Court in the case of Whirlpool Corporation (supra), **the writ petition can be entertained despite the availability of alternative remedy. It is more so when procedure given under the Act of 1959 was not applied.**

30. Accordingly, for all the reasons given above, we cause interference in the impugned order dated 17.03.2022 of the learned Single Judge so also the order dated 31.12.2013 passed by the respondent department. It is, however, with liberty to the department to proceed in the matter afresh in accordance with the provisions of law. The appellant would be at liberty to prove their case by bringing the material and evidence, if fresh action is taken, and after completion of the aforesaid procedure, which may be after taking into consideration the power given to the department under Section 110 of the Act of 1959, to pass a speaking order.”



WEB COPY

18. In the case of Solaimuthuraja Vs. the Commissioner HR&CE and others reported in 2010 (2) CTC 289, it has been held as under:

9. The Hon'ble Division Bench in the above referred case has held that by the appointment of an Executive Officer under Section 45(1) of the Act, coupled with the conferment on him of all or almost all of the powers would be to relegate the hereditary trustee to the post of non entity and therefore, the power vested in the Commissioner under Section 45(1) of the Act, being a very drastic one, it has to be exercised cautiously, reasonably and fairly as exercise of such power may even result in the effective elimination of the hereditary trustee from management and administration of the institution. Therefore, the Hon'ble Division Bench of this Court held that natural justice and fair play require that the Commissioner should properly exercise the power under Section 45(1) of the Act, after being satisfied that the institution has not been properly managed and the then administration leaves much to be desired and requires to be toned up or improved and the appointment of an Executive Officer is justified to secure such better administration. The Division Bench also took note of the fact that though Section 45(1) of the Act does not contemplate any notice or enquiry, such power cannot be exercised without following the principles of natural justice. In the present case, the impugned order has been passed solely based on the report submitted by the second respondent, dated 06.08.2008, and except for such report there is no specific finding rendered by the first respondent as to under what circumstances, the institution has not been properly managed and the administration requires to be toned up or improved, which would justify the appointment of an Executive Officer in order to secure better administration.

10. Therefore, I am satisfied that the impugned order has been passed without affording an opportunity to the petitioner and without resorting to



WEB COPY

a specific finding as to why such power is exercised. For the above reasons, the petitioner has to succeed and accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remanded back to the first respondent to consider the matter afresh after issuing notice to the petitioner and other non-hereditary trustee and thereafter, conduct enquiry and pass appropriate orders, in accordance with law after considering the facts and circumstances of the case as well as the other materials.

11. If the first respondent proposes to rely upon any material or report which is adverse to the interest of non-hereditary trustees, the same shall be furnished to the petitioner to enable the petitioner to submit his objections if any.”

19. In the case of R. Shanmugha Sundaram Vs. the Commissioner HR&CE

and others reported in 1991 (2) MLJ 582 it has been held as under:

“18. Having said so, it is necessary for me to observe that this is a typical case where the department has assumed jurisdiction and spoiled the quietness of the place in which the Samadhi is installed. In my view, this is a case where the department has not applied its mind at all before taking any action on the basis of a letter of the Trustee. In my view, the department cannot at all be a sentinel where it has not got any jurisdiction. It cannot take over a Samadhi-not one but two-and try to build up a temple in that place. What all has been done for the past six years by the department is in my view, is a highhanded action. The respondent department ought to have left the place to the worshippers and the followers to worship the Samadhi of Pamban Swamigal peacefully.



WEB COPY

19. In such circumstances, though the prayer asked for is entirely different, it is well settled that this Court can mould the prayer to suit the occasion and as such a writ of mandamus will issue to the respondents 1 and 2 to hand over the management of the affairs of the Samadhi etc., to the Sabha, the third respondent herein, within a month from to-day, as it was done before the respondent department took over the same. As such, I am granting the relief to the Sabha, the third respondent herein, to take over the management of the affairs of the Samadhi of Pamban Swamigal. The writ petition is allowed. However, there will be no order as to costs. I do hope that the Sabha will understand the situation and act according to the pious wishes of the Swamigal as laid down in his will and codicil, without giving any room to anybody to contend that the Sabha is not in existence.”

20. This Court has already considered the issue of appointing Fit person in W.P.(MD)No.21734 of 2023 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



WEB COPY

(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:



WEB COPY

(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.



WEB COPY

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."

21. In the present case, this Court has already held supra that the respondents have no evidence or material to prove the allegation of misappropriation and there is no subjective satisfaction and no prior notice was issued before appointing the Fit person. Moreover, the respondents have not mentioned any period for appointing the Fit person. Therefore the appointment of Fit person is illegal and the impugned order is liable to be quashed and accordingly quashed.



WEB COPY

22. The petitioner is at liberty to file appropriate petition / suit to establish the temple as denomination temple and the same shall be filed within a period of four weeks.

23. With the above observations and directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, W.M.P.(MD)No. 18126 of 2023 is allowed and M.P(MD)Nos.1 & 2 of 2014 are closed.

Index : Yes / No

21.09.2023

Internet : Yes

ksa

To

1. The Commissioner,
Hindu Religious Charitable and Endowments Department,
Chennai-34.
2. The Joint Commissioner,
Hindu Religious Charitable and Endowments Department,
Tirunelveli.
3. The Assistant Commissioner,
Hindu Religious Charitable and Endowments Department,
Thoothukudi-2.
4. The Executive Officer,
Arulmigu Povanatha Swamy Thiru Kovil,
Kovilpatti, Thoothukudi District.



WEB COPY



S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.13749 of 2014**

21.09.2023