



W.P. (MD) No. 18062 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

W.P. (MD) No. 18062 of 2017

and

W.M.P. (MD) No. 14516 of 2017

M.Chithambara Vathiyar

... Petitioner

Vs.

1.The Secretary,
Tamil Nadu Hindu Religious
and Charitable Endowment Department,
St.George Fort, Chennai.

2.The Commissioner,
Hindu Religious and Charitable
Endowment Board,
Nungambakkam,
Chennai-34.

3.The Executive Officer/Joint Commissioner,
Arulmigu Subramaniya Swami Thirukovil,
Thiruchendur, Tuticorin District.

4.P.T.Kottai Manikandan

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned Government order in G.O.Ms.No.192 (Tourism, Cultural Endowments Department) dated 01.09.2017 issued by the first respondent herein and quash the same and further direct the first respondent herein to pass appropriate orders declaring the fourth respondent herein as a disqualified person to hold the post of Fit Person of Arulmigu Subramaniya Swami Thirukovil, Tiruchendur.

For Petitioner	: Mr.D.Nallathambi
For R1 & R2	: Mr. P.Subbaraj Special Government Pleader
For R3	: Mr. M.Muthugeethayan
For R4	: Mr. S.Ramesh

ORDER

Heard Mr. D.Nallathambi, Learned Counsel for the Petitioner, Mr. P.Subbaraj, Learned Special Government Pleader appearing for the First and Second Respondents, Mr. M.Muthugeethayan, Learned Counsel for the Third Respondents and Mr. S.Ramesh, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.



2. The Fourth Respondent had been appointed as Fit Person in the Temple of the Third Respondent in G.O. (P) No. 398, Tamil Nadu Religious Endowment Information Department dated 11.11.2011 issued by the First Respondent in the exercise of powers under the proviso to Section 47(I)(c) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act' for short) pending constitution of the Board of Trustees for the said Temple.

3. The Petitioner made applications dated 29.07.2014 and 13.08.2015 under Section 53(1)(a) and 53(2) of the Act before the First Respondent contending that the Petitioner suffered from disqualification for holding the post of trustee of the Temple of the Third Respondent and as such, he could not also function as 'Fit Person' pending constitution of the Board of Trustees of the said Temple. The First Respondent by G.O. Ms. No. 192, Tourism, Cultural Endowments Department dated 01.09.2017, rejected the contentions of the Petitioner stating as follows:-

- (i) The criminal case against the Fourth Respondent is still under consideration and no final decision has been passed therein.



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- (ii) After the appointment of the Fourth Respondent as Fit Person, the revenues from the collection of the Temple by special entry fee had been substantially increased.
- (iii) The fee paid for conducting the case in W.P. (MD) No.2532 of 2012 from the funds of the temple of the Third Respondent had been sanctioned by the Commissioner of the Hindu Religious and Charitable Endowments.

The said order is challenged in this Writ Petition.

4. It has been brought notice that after the filing of the Writ Petition, the Additional District and Sessions Court, Thoothukudi (FAC) by judgment dated 03.02.2023 in S.C.No.1 of 2015 has acquitted the Fourth Respondent. The circumstance that after the appointment of the Fourth Respondent as 'Fit Person' of the Temple, the revenue from the collection of Temple by special fee has substantially increased is an irrelevant factor for determining his disqualification to hold the said post. Inasmuch as Section 28 of the Act envisages that a trustee shall not be entitled to spend the funds of the religious institution for meeting any costs, charges or expenses incurred by



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him in any suit, appeal or application or other proceedings for, or incidental to his removal from office or the taking of any disciplinary action against him, the Commissioner of the Hindu Religious and Charitable Endowments Department had erred in approving the fees paid for defending the Fourth Respondent in W.P (MD) No. 2532 of 2012 before this Court.

5. In that backdrop, when the First Respondent has not adverted to any of the complaints of specific disqualifications mentioned in Section 53 of the Act while deciding the matter in the proper perspective it is not possible to uphold the impugned order. However, as it is brought to notice that the Fourth Respondent has ceased to be the Fit Person of the Temple of the Third Respondent on the appointment of one Kannan Athithan to that post with effect from 05.02.2018 and that the Board of Trustees has been constituted for the Temple of the Third Respondent by G.O. Ms. No. 182, Tourism, Cultural and Endowments Department dated 26.08.2022 issued by the Government of Tamil Nadu, it would not be necessary to set aside the impugned order and remit the matter for re-consideration before the First Respondent. At the same time, it is made clear that it would not preclude filing of any fresh petition for determining as to whether the Fourth



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Respondent is disqualified to hold the post of 'Fit Person' or 'Trustee' of any Temple under the Act and no view expressed by this Court on the merits of the controversy in that regard.

In the result, the Writ Petition is disposed with the aforesaid observations. Consequently, connected Miscellaneous Petition is closed. No costs.

13.02.2023

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Index : Yes/No

Internet : Yes/No

Note: Issue order copy by 21.08.2023.

To

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P.D.AUDIKESAVALU,J.

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