



W.P(MD)No.29357 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.12.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

W.P(MD)No.29357 of 2023
and
W.M.P(MD)No.25338 of 2023
in
W.P(MD)No.29357 of 2023

V.Maharajan

.. Petitioner

VS

- 1.The Commissioner,
Hindu Religious Charitable &
Endowments Department,
No.119, Uthamar Gandhi Road,
Nungambakkam,
Chennai – 600 034.
- 2.The Government Additional Chief Secretary,
Tourism, Culture and Religious
Endowments Department,
Secretariat,
Fort St. George,
Chennai – 600 009.
- 3.The Joint Commissioner,
Hindu Religious Charitable and
Endowments Department,
Madurai – 625 001.



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4.P.K.M.Chellaiah
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5.D.Subbulakshmi

6.Rukmani Palanivel Rajan

7.M.Seenivasan

8.S.Meena

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records pertaining to the impugned G.O in G.O.Ms.(Pa) No.269, Tourism, Culture and Religious Endowments (Aa.Ni 3-1) Department, dated 06.11.2023 issued by the Government and quash the same as illegal and unconstitutional.

For Petitioner : Mr.M.N.Rajapanth
for Mr.N.Saravanan

For Respondent Nos.1 to 3 : Mr.Veera.Kathiravan
Additional Advocate General
assisted by
Mr.P.Thilak Kumar
Government Pleader
and
Mr.M.Senthil Ayyanar
Government Advocate



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ORDER

[Order of the Court was made by M.SUNDAR, J.]

Captioned 'Writ Petition' [hereinafter 'WP' for the sake of brevity] has been filed in this Court on 08.12.2023 as a 'Public Interest Litigation' [hereinafter 'PIL' for the sake of brevity]. Captioned 'Writ Miscellaneous Petition' shall hereinafter be referred to as 'WMP' for the sake of brevity.

2.Factual matrix in a nutshell is that the petitioner, who is protagonist of captioned PIL, says that he is assailing 'G.O.Ms.(Pa)No. 269, Tourism, Culture and Religious Endowments (Aa.Ni 3-1) Department, dated 06.11.2023 made by the Government of Tamil Nadu' [hereinafter 'impugned G.O' for the sake of brevity, convenience and clarity]; that in and vide impugned G.O, five non-hereditary trustees have been appointed for 'Arulmighu Meenakshi Sundareswarar Thirukovil situate in Madurai City, Madurai Taluk and Madurai District' [hereinafter 'said Temple' for the sake of brevity, convenience and clarity]; that the sheet anchor contention of PIL petitioner in his



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campaign against impugned G.O is that 'the appointed five trustees' [hereinafter 'said trustees' collectively for the sake of brevity, convenience and clarity] have political affiliation; this is a disqualification as regards appointment of said trustees as non-hereditary trustees of said Temple and therefore impugned G.O is vitiated and has become liable for being dislodged in the legal drill on hand (to be noted, this is the crux and gravamen of PIL petitioner's contention).

3.In the Admission Board hearing today Mr.M.N.Rajapanth, learned counsel representing Mr.N.Saravanan counsel on record for PIL petitioner is before us. Learned counsel adverting to the support affidavit and more particularly paragraph 3 thereat submitted that PIL petitioner is a practising Advocate. Learned counsel submitted that his campaign against impugned G.O is predicated on one point [notwithstanding very many averments in the support affidavit] and that one point is, political affiliation of said trustees. In support of this contention, learned counsel pressed into service a 'common order dated 07.06.2021 in suo motu W.P.No.574 of 2015, W.P(MD)No.24178 of



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2018 and WMPs thereat made by another Hon'ble Coordinate Division Bench of this Court' and submitted that paragraph 55 of this common order comes to his aid. This order shall hereinafter be referred to as 'suo motu order' for the sake of convenience and clarity. Learned counsel was unable to produce a copy of this suo motu order. Therefore we ferreted out the suo motu order from the official website of this Court. We had the benefit of perusing the order and we also had the benefit of perusing paragraph 55 thereat which reads as follows:

'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.'

4.Issue notice regarding admission to official respondents.

5.Mr.P.Thilak Kumar, learned Government Pleader, accepted notice for official respondents [respondents 1 to 3]. Learned Government Pleader is led by Mr.Veera.Kathiravan, learned Additional Advocate General, State of Tamil Nadu.



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6.As we have issued notice regarding admission, we make it clear that we are testing whether the captioned matter passes muster qua admission ie., at the threshold. In this regard, learned Additional Advocate General submitted that the aforementioned *suo motu* order dated 07.06.2021 was subsequently reviewed by the same Hon'ble Coordinate Division Bench in and vide Review Application(Writ)Nos. 169 and 170 of 2021 and this common review order is dated 02.06.2023. We had the benefit of perusing the review order made by another Hon'ble Coordinate Division Bench. As regards aforementioned paragraph 55 of *suo motu* order, the most relevant part of the review order is paragraph 18.2 and the relevant portion of 18.2 reads as follows:

'18.2. Another issue that was raised is relating to the appointment of trustees with political connections. The trustees who play a significant role in the day to-day management of the temple administration, are to be people of impeachable character with devotion towards the deity. Sections 25A and 26 were introduced by insertion and substitution in the Act with that object. Therefore, the appointment of trustees cannot be based merely on political will. Opportunity must be given to all devotees and the process of selection



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must be transparent. The person to be appointed as trustee, must be satisfied with all the requirements, as per the provisions of the HR&CE Act and the judicial pronouncements and does not suffer from the vice of disqualification under section 26. The person so appointed proves to be religious and an ardent devotee and that, a mere political connection would not vitiate such appointment.....'

(underlining made by this Court for supplying emphasis and for ease of reference)

Before proceeding further, we notice that there appears is a typo in the second sentence (4th line) in the above extract of paragraph 18.2 of review order. The word 'impeachable' thereat if read as 'unimpeachable' becomes contextually correct. It is obviously a typographical/secretarial error. There is no disputation, disagreement or contestation before this Court in this regard and therefore, we read the word 'impeachable' occurring in second sentence of paragraph 18.2 of the review order supra as 'unimpeachable'.

7. We are acutely conscious of the fact that said trustees ie., five non-hereditary trustees appointed vide impugned G.O have been arrayed as respondents 4 to 8 (private respondents) and they are not before us. As already alluded to supra ie., as delineated supra, we



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are only testing the captioned main WP as to whether it passes muster in the Admission Board and therefore we had only issued notice regarding admission (limiting it to official respondents) and we had not issued Rule Nisi.

8.This Court having had the benefit of hearing Mr.M.N.Rajapanth, learned counsel for PIL petitioner and Mr.Veera.Kathiravan, learned Additional Advocate General instructed by Mr.P.Thilak Kumar, learned Government Pleader for official respondents, is of the considered view that captioned main WP does not pass muster in the Admission Board and the reasons are as follows:

(i) Impugned G.O is one which appoints five non-hereditary trustees for said temple. The entire exercise is governed by 'the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 [Tamil Nadu Act 22 of 1959]' which shall hereinafter be referred to as 'TN HR & CE Act' for the sake of brevity, convenience and clarity. The impugned G.O has been made in the light of Sections 46 and 47 of TN HR &



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CE Act. Section 46 of TN HR & CE Act deals with publication of list of institutions and this is based on the annual income of the Temples. In the case on hand, said Temple falls under Section 46(iii) of TN HR & CE Act as annual income of the said Temple is not less than ten lakhs rupees ie., over ten lakhs. Section 47 of TN HR & CE Act captioned '*Trustees and their number and term of offices*' *inter alia* talks about authorities who can appoint non-hereditary trustees for Temples depending on which category they fall under vide Section 46 of TN HR & CE Act. As regards a Temple which falls under Section 46(iii) of TN HR & CE Act, the authority for constituting Board of Trustees is Government. This is vide Section 47(1)(a)(iii) of TN HR & CE Act. Therefore there is no infirmity as regards exercise of power qua impugned G.O.

(ii) As alluded to delineated supra, only ground that has been canvassed before us is political affiliation of said trustees. To put it differently, campaign of PIL petitioner



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qua impugned G.O is predicated on the sole point that said trustees have political affiliation this is disqualification qua trustees and therefore impugned G.O is liable to be dislodged in the legal drill at hand. In this regard, learned counsel drew our attention to a portion of ground (d) and ground (j) in the support affidavit which read as follows:

'(d)

.....

In so far as fifth respondent Subbulakshmi is concerned, she was a DMK Councillor.

In so far as sixth respondent Rukmani Palanivel Rajan is concerned, she is mother of none other than the Hon'ble Minister Thiagarajan, Minister for Information Technology.

.....

(j) From the above facts it is crystal clear that these respondents 4 to 8 were appointed simply for the fact that they are councillors/holding some posts in the ruling DMK party.'

(iii) As already alluded to supra, learned counsel was unable to produce aforementioned *suo motu* order but we ferreted out the same from the official website of this Court, we had the benefit of perusing the same and to be



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noted, paragraph 55 of *suo motu* order has already been extracted and reproduced supra. This *suo motu* order which was pressed into service and the sheet anchor submission on which PIL petitioner predicated his campaign against impugned G.O has now been reviewed by the same Hon'ble Coordinate Division Bench and the relevant paragraph is paragraph 18.2 which has been extracted and reproduced supra. In paragraph 18.2, Hon'ble Coordinate Division Bench has made it clear that a person so appointed ie., non-hereditary trustees under Section 47 would not suffer a disqualification merely because of political connection and political connection would not vitiate such appointment.

(iv) As regards TN HR & CE Act, the expression '*person having interest*' has been described vide sub-Section (15) of Section 6. Sub-Section (15) of Section 6 of TN HR & CE Act reads as follows:

'(15) 'Person having interest' means-

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;



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(b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat;

(c) in the case of a specific endowment, a person who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity;

(d) in case of samadhi, brindhavan or any other institution established or maintained for a religious purpose a person who is entitled to attend at or is in the habit of attending the performance of worship or service in such religious institution, or who is entitled to partake or in the habit of partaking in the benefit of the distribution of gifts thereat.'

There is no averment whatsoever nay there is no whisper in the support affidavit as regards the ingredients of sub-Section (15) of Section 6 of TN HR & CE Act.

(v) Section 6 of TN HR & CE Act is captioned 'definitions' but we have chosen to describe sub-section (15) thereat (“**person having interest**”) as a 'description' rather than 'definition'. The reason is, sub-section (15) is elaborate, it is descriptive and it is not in the nature of confining the



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meaning of the 'expression' as captioned. In any event margin note or caption of a provision of law cannot by itself control the provision. We have chosen to say that sub-section (15) of Section 6 of TN HR & CE Act 'describes' *person having interest* rather than saying it 'defines' though sub-section (15) is slotted under Section 6 captioned 'Definitions'.

(vi) In addition to absence of averments qua Section 6(15) of TN HR & CE Act, learned Additional Advocate General, on instructions, pointed out that there are as many as seven criminal cases against PIL petitioner but we refrain from going into this submission and leave this question open. The reason is this Court is *parens patriae* qua temples as held by Hon'ble Supreme Court in ***A.A.Gopalakrishnan's* case [A.A.Gopalakrishnan Vs. Cochin Devaswom Board and Ors., reported in (2007) 7 SCC 482]**. The most relevant paragraph is as follows:

'10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/ Sebaites/employees. Instances are many



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where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.'

Though aforementioned **A.A.Gopalakrishnan's** case pertains to Courts protecting temple properties as '*custodia legis*' of the same, the underlying/underpinning principle is, the deity is in the nature of a minor and Court is it's guardian. The case on hand pertains to appointment of non-hereditary trustees who would *inter alia* be taking decision pertaining to temple properties. In this view of the matter, even if the PIL petitioner is discharged (to be noted, in any case PIL petitioner is only an informant) this Court can examine the complaint. Though, this is a general principle across the board qua PILs, as the case on



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hand pertains to a temple under TN HR & CE Act this sublime philosophy and salutary principle applies with greater rigour and all force.

(vii) Therefore, this Court being *parens patriae* qua said temple examined the complaint that has been brought before us and we tested whether it passes muster in the Admission Board.

(viii) Learned Additional Advocate General, in support of his challenge to the bonafides and locus of PIL petitioner, drew our attention to ***Balwant Singh Chaufal's*** case [*State of Uttaranchal Vs. Balwant Singh Chaufal and others* reported in **2010 (3) SCC 402**]. Our attention was drawn to paragraph 198 and sub-paragraph (8) thereat but we refrain from going into the same as we are examining the complaint before us as *parens patriae* qua said temple.



(ix) As regards 'qualifications' and

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CE Act, there is a clear adumbration of both under Sections 25-A and 26 respectively [to be noted, Section 25-A kicked in on and from 09.12.2013]. To add clarity and specificity, we make it clear that Section 25-A is an adumbration of qualifications, it is captioned '*qualifications of trustees*' and it sets out four qualifications. Section 26 is an adumbration of '*disqualification of trustees*' and that makes an adumbration of $9 + 2 = 11$ disqualifications in addition to the resignation aspect of a trustee which is set out in Section 26(2)(b). Section 25-A and Section 26(1), (1-A) and (2) of TN HR & CE Act read as follows:

'25-A. Qualifications of trustees._ A person shall be qualified for being appointed as, and for being, a trustee of any religious institution or endowment-

(a) if he has faith in God;

(b) If he possesses good conduct and reputation and commands respect in the locality in which the religious institution or endowment is situated;



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(c) If he has sufficient time and interest to attend to the affairs of the religious institution or endowment; and

(d) if he possesses such other merits incidental thereto.'

26. Disqualification of trustees.—(1) A person shall be disqualified for being appointed as, and for being, a trustee of any religious institution or endowment,-

(a) if he does not profess the Hindu religion ;

(b) if he is not a citizen of India];

(c) except in the case of a hereditary trustee, if he is less than twenty-five years of age.

(d) if he is an undercharged insolvent ;

(e) if he is of unsound mind or is suffering from mental defect or infirmity which would render him unfit to perform the functions and discharge the duties of a trustee or is suffering from leprosy or any other loathsome disease ;

(f) if he has been removed or dismissed from service under the Central Government or any State Government or any local authority;

(g) if he has been sentenced by a criminal court for an offence involving moral delinquency, such sentence not having been reversed or the offence pardoned;

(h) if he has acted adverse to the interest of the institution.

(i) if he is in arrears of any kind due by him to any religious institution or endowment.

(1-A) A person shall be disqualified for being appointed as, and for being, a trustee of a religious institution or endowment.-

(a) if he is interested in a subsisting lease of any property of, or contract made with or any work being done for the religious institution or endowment.



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(b) if he is employed as a paid legal practitioner on behalf of or against the religious institution or endowment.

(2) If a trustee—

(a) becomes subject to any of the disqualifications mentioned in subsection (1) or sub-section (1-A); or

(b) resigns his seat by writing under his hand addressed.'

A careful perusal of the aforementioned adumbration and paragraph 55 of *suo motu* Order of another Hon'ble Coordinate Division Bench being order dated 07.06.2021 as reviewed vide order dated 02.06.2023 in Review Application (Writ) Nos.169 and 170 of 2021 [paragraph 18.2 thereat] brings to light that there is nothing to demonstrate that anyone of the five trustees suffer from any one of 11 disqualifications adumbrated in Section 26. Equally there is nothing palpable or tangible to demonstrate that said trustees do not possess qualifications adumbrated vide Section 25-A of TN HR & CE Act. This by itself would drop the curtains on the captioned matter. However, as we are testing the captioned WP in the Admission Board, ie., as to whether the



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captioned matter passes muster in the Admission Board, we looked into whether the composition of the Trust Board satisfies the requirement vide Section 47(1)(c) of TN HR & CE Act. In the case on hand, we find that three out of five trustees are women. Therefore, the Constitution as regards to one limb of Section 47(1)(c) is more than satisfied ie., one limb which says that at least one trustee should be a woman.

As regards second requirement, learned Additional Advocate General, on instructions, submits that serial No.2 in the impugned G.O [fifth respondent in the captioned WP] is a member of Schedule Castes and therefore this condition is also satisfied. In the interest of ease of reference qua better appreciation of this order we deem it appropriate to set out Section 47(1)(c) of TN HR & CE Act, we do so infra and the same reads as follows:

'47.Trustees and their number and term of offices.-

(1) [(a) Where a religious institution included in the list published under Section 46 or in respect



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of which the Assistant Commissioner has no power to appoint trustees, has no hereditary trustee,-

(i)

(ii)

(iii)

(a)

(b)

*(c) the number of worshippers and importance of the religious institutions as a pilgrim centre; and
.....'*

(x) Constitution of trustees ie., non-hereditary trustees vide Section 47 of TN HR & CE Act is a very important function of a State as regards TN HR & CE Act. The core point having become a damp squib/non-starter, there is no other infirmity that has been pointed out in the captioned WP which has been filed as a PIL. Therefore we find that there is no infirmity qua said impugned G.O and therefore, we have no hesitation in saying that captioned WP does not pass muster in the Admission Board.



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(xi) Though made clear supra, for the sake of

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specificity, we make it clear that as regards the bonafides of PIL petitioner which has been put to challenge by learned Additional Advocate General and as regards any other rights and contentions which private respondents ie., respondents 4 to 8 may have, the same stand preserved and protected untrammelled by this order. If this issue comes up for consideration before any other Court/Courts/Forum/Fora/Authority/Authorities, the Court/Courts/Forum/Fora/Authority/Authorities shall consider the same on its own merits and in accordance with law untrammelled by instant order of this court, ie., *de hors* this order. This is the safety valve which we have put in qua PIL petitioner as well as private respondents 4 to 8. This is more so, as regards private respondents as we are acutely conscious of the fact that private respondents 4 to 8 are not before us in the Admission Board.



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(xii) As alluded to supra, learned counsel drew

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our attention to a portion of ground (d) and ground (j) in the support affidavit which have been extracted and reproduced supra. Both these grounds pale into insignificance owing to Sections 25-A and 26 of TN HR & CE Act read in the light of paragraph 18.2 of the review order dated 02.06.2023 made by a Hon'ble Coordinate Division Bench in Review Application (Writ) Nos.169 and 170 of 2021.

(xiii) As a corollary to the preceding point of dispositive reasoning of this Court, it has to be seen that as delineated supra, there is nothing tangible or palpable to demonstrate that respondents 4 to 8 do not have the four qualifications vide Section 25-A and equally, there is nothing tangible/palpable to demonstrate that respondents 4 to 8 suffer from any disqualification vide adumbration under Section 26 (9 + 2 = 11) disqualifications.



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9. In the light of narrative, discussion and dispositive reasoning, we have no hesitation in holding that captioned main WP does not pass muster in the Admission Board ie., it does not clear the threshold of Admission and we dismiss the captioned WP in the Admission Board preserving rights of private respondents and PIL petitioner in aforesaid manner. Consequently, captioned WMP is also dismissed. Notwithstanding what has been captured supra, considering the fervent plea made by learned counsel for PIL petitioner, we refrain from imposing costs.

[M.S.,J.] [R.S.V.,J.]
13.12.2023
(1/2)

Index : Yes
Neutral Citation : Yes
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Post Script: (i) Upload forthwith.

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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