



W.P(MD)Nos.23655 & 29770 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 28.03.2024

Pronounced on : 19.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.23655 & 29770 of 2023

WMP(MD) Nos.19827, 19828, 23663 of 2023

WP(MD) No.23655 of 2023:-

1.S.Nachiappan
2.Nachiappan
3.Suresh

: Petitioners

Vs

- 1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.
- 3.The District Committee,
Through its Chariman,
Hindu Religious and Charitable Endowments Department,
Sivagangai.
- 4.The Executive Officer,
Arulmighu Koppudayanayagi Amman Thirukovil,
Karaikudi.



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5.CT.Manivannan

6.Tmt.S.Vijayapriya

: Respondents

WP(MD) No.29770 of 2023:-

C.Selvakumar

: Petitioner

Vs

1.The Principal Secretary,
Rep by Tamil Nadu State Government,
Hindu Religious & Charitable Endowments Department,
St.Geroge Fort,
Chennai – 9.

2.The Commissioner,
Hindu Religious & Charitable Endowments Department,
119, Uthamar Gandhi Road,
Nungambakkam,
Chennai – 34.

3.The Joint Commissioner,
Madurai Division,
Madurai – 625 016.

: Respondents

PRAYER in WP(MD) No.23655 of 2023:- Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration declaring that the impugned resolution passed by the third respondent in Resolution No.57, dated 31/7/2023 and the impugned proceedings passed by the second respondent in Se.Mu.Na.Ka.No.2469/2023/A5, dated 04/08/2023 are illegal and against the provisions of Hindu Religious and Charitable Endowments Act, 1959.



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PRAYER in WP(MD) No.29770 of 2023:- Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first and second respondent to appoint the petitioner as a trustee either in Arulmighu Thiruparankundram Murugan Kovil or in Arulmighu Solaimalai Murugan Thirukovil, Pazhamudir Solai as per the proceedings passed by the second respondent in Naa.Kaa.No.18049/2019/N2, dated 03.09.2019 based on the petitioner's representations dated 31.01.2019 and 27.03.2019 made before the second respondent and 25.11.2023 made before the third respondent.

For Petitioners : Mr.V.R.Shanmuganathan
For R1 to R3 : Mr.P.Subba Raj
Special Government Pleader
For R4 : Mr.R.Shankar Ganesh
For R.5, R.6 : Mr.R.Suriya Narayanan

(in WP(MD) No.23655 of 2023)

For Petitioner : Mr.K.Kannan
For Respondents : Mr.P.Subba Raj
Special Government Pleader

(in WP(MD) No.29770 of 2023)



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COMMON ORDER

The writ petition in WP(MD) No.23655 of 2023 is filed by the petitioners / residents of Karungulam Village, Sivagangai, claiming to be the devotees of Arulmighu Paranachiamman Temple, as against the order passed by the Assistant Commissioner, HR & CE Department, Sivagangai, appointing the respondents 5 & 6 as the Non-Hereditary Trustees of the above Temple, on the ground that the respondents 5 & 6 were appointed without following any procedure as contemplated under the HR & CE Act.

2.The writ petition in WP(MD) No.29770 of 2023 is filed by the petitioner, a follower of saivism, for a Mandamus directing the respondents to appoint him as a Non-Hereditary Trustee either in Arulmighu Thiruparankundram Murugan Temple or in Arulmighu Solaimalai Murugan Temple, Pazhamuthirsolai.

3.Since the issue in both the writ petitions pertains to the appointment of Non-Hereditary Trustees for the Temples, under the



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control of HR & CE Department, these writ petitions are taken up together and are disposed of by this common order.

WP(MD)No.23655 of 2023:-

4.The case of the petitioners is that Arulmighu Paranachiamman Temple is a Village Temple, administered by the villagers of Karungulam. In the centre of the village, there is a Sami Veedu and Pettagam, wherein, the offerings of the Temple have been kept. In the above village, there are around 400 families and they belong to different communities. They are worshipping the deity without any difference of opinion. Moreover, a Trust, by name, P.Karungulam Paranachiamman Arakkattalai has been established with twelve Trustees, who are the Villagers and the Temples are administered by the said Trust properly without any hindrance. However, the HR & CE Department has appointed one Manivannan, Vijayapriya and Sethuraman as Non-Hereditary Trustees for the above Temple.

5.Learned Counsel for the petitioners submitted that there is no necessity for appointment of Non-Hereditary Trustees for the subject



Temple, since the Temple is well administered by the villagers and there is no complaint of any mal-administration or misappropriation. He further submitted that the appointment of Non-Hereditary Trustees has been made without any notice to the present administrators and without following the procedure as contemplated under Section 7A of the Hindu Religious and Charitable Endowments Act, 1959.

6.To substantiate the same, the learned Counsel for the petitioners submitted that one of the appointee, Sethuraman, belongs to the adjacent Village, however, he was also appointed as a Non-Hereditary Trustee. Once this issue has been flagged, he has resigned from the said post.

7.Learned Counsel appearing for the third respondent / District Committee of HR & CE Department, Sivagangai, refuted the allegations and submitted that a notice under Section 49(1) of HR & CE Act, 1959 was issued by the second respondent on 05.06.2023 fixing the last date for submission of applications as 04.07.2023. The notice was affixed on 13.06.2023 at various places of the Temple. In pursuant to the above notice, five applications have been received. Based on the report of the



field officers, recommendation has been made to the District Committee and on the basis of the Resolution passed by the District Committee, three persons were recommended to be appointed as Non-Hereditary Trustees for a period of two years, vide proceedings in Pro.RC.No. 2469/2023/A5, dated 04.05.2023.

8.He further submitted that there is no Hereditary Trustee for the above Temple. Since there was a dispute among the villagers regarding selection of Non-Hereditary Trustees, a fit person was appointed in the year 2010 and he is administering the Temple. He further submitted that there is no Trust, namely Pa.Karungulam Sri Para Nachiamman Arakkattalai for the subject Temple, as claimed by the petitioners. In fact, an application in OA No.34 of 2023 filed by one Nachiappan (one of the petitioners) and others for framing a scheme is still pending before the Joint Commissioner, HR & CE Department, Sivagangai.

9.Learned Counsel appearing for the private respondents submitted that the respondents 5 & 6 have been appointed as Non-Hereditary Trustees as per the procedure contemplated under the HR &



CE Act,1959. He further submitted that the petitioners have not submitted any application. They have not even participated in the selection process, however, they are claiming that they are the Hereditary Trustees.

WP(MD)No.29770 of 2023:-

10.According to the petitioner, he is a follower of saivism, doing "ulavarapani" in several Temples and he is a Philanthropist, having the required qualifications to be appointed as a Trustee. The Commissioner of HR & CE Department, by proceedings dated 03.09.2019, has also stated that the petitioner would be considered at the time of appointment of Trustees. Therefore, the petitioner has submitted representations before the HR & CE Department and filed this writ petition to direct the respondents 1 & 2 to appoint him as a Non-Hereditary Trustee either in Arulmighu Thiruparankundram Murugan Kovil or in Arulmighu Solaimalai Murugan Thirukovil, Pazhamudir Solai, as per the proceedings passed by the second respondent in Naa.Kaa.No.18049/2019/N2, dated 03.09.2019.



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11.This Court considered the rival submissions made and also perused the materials placed on record.

12.In one writ petition, the petitioners have challenged the order of appointment of Non-Hereditary Trustees. In another writ petition, the petitioner sought for appointing himself as a Non-Hereditary Trustee. On a query posed by this Court, the HR & CE Department has filed a detailed report with regard to the procedure followed by them in appointment of Trustees for the Temples under their control and the gist of the report is as follows:-

- i. A notice inviting applications for appointment of Trustees is published giving a minimum 15 days of time for submission of applications and the notice is annexed / displayed in the notice board at various places of the Temple. The notice is also displayed in the Notice Board of the Village Administrative Office / Municipal Office / Office of the Joint Commissioner / the Assistant Commissioner as the case may be. The notice is also uploaded in the website of HR & CE Department.



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- ii. As per Section 25A and 26 of the HR & CE Act, the Joint Commissioner / Assistant Commissioner shall cause verification of the qualifications, antecedents of the applicants.
- iii. Section 7A of the HR & CE Act empowers the Government to constitute a District Committee in each revenue District and the Committee shall prepare a panel of qualified persons as per the norms under the Act.
- iv. The Regional Joint Commissioners / the Commissioners of the Department are empowered to appoint Trustees to the Religious Institutions classified under Section 46(i) and 46(ii) respectively.
- v. The hereditary trustees for the listed temples are appointed as per the provision under Section 47 of the Act.
- vi. The trustees for the non-listed temples are appointed under Section 49 of the Act. They are having a term of two years (amended).
- vii. The Board of trustees shall be three persons from among the panel of persons sent by the District Committee under sub section 4 of Section 7(A) of the Act.
- viii. In addition to the persons appointed by the Joint Commissioner, Deputy Commissioner or the Commissioner, the Government may



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- also nominate two persons, who are qualified as trustees under this Act as members of the said Board of trustees in the interest of public and depending upon the income, properties of the religious institutions and number of worshippers of the religious institution.
- ix. Similar conditions have been enumerated for the appointment of Trustees for the non-listed Temples under Section 49 of the Act.
- x. Newspaper advertisements have been published, inviting applications for appointment of District Committee members in respect of 34 Districts. Insofar as four Revenue Districts, the District Committees have already been constituted.
- xi. Notifications for appointment of Trusteeship have been issued for 393 temples all over the State of Tamil Nadu and a Scheme for trusteeship has been formed. Applications are being received and the process of selection has been commenced and it will be completed at the earliest.
- xii. The Department has already proceeded in a fair and transparent manner in the formation of District Committee and by duly following the procedure / provisions as contemplated in the Act, the Trustees are being appointed.



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13. Sections 25A and 26 of the HR & CE Act speak about the qualifications and disqualifications of Trustees and the same is extracted as under:-

“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;*
- (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

- (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*



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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.

(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 –

(i) in the case of trustee appointed by the Assistant



Commissioner, to the Assistant Commissioner

(ii) in the case of trustee appointed by the Joint/Deputy Commissioner, to the Joint / Deputy Commissioner ; and

(iii) in any other case, to the Commissioner, his seat shall thereupon become vacant.

(3) If any question arises as to whether a trustee has become subject to any of the disqualifications mentioned in sub-section (1), the question shall be referred for the decision of 3[the Joint / Deputy Commissioner.

(4) If a hereditary trustee becomes subject to any of the disqualifications mentioned in sub-section (1), 1[the Joint Commissioner or the Deputy Commissioner, as the case may be], may supercede the trustee.

(5) Any person affected by an order of the Joint / Deputy Commissioner under sub-section (3) or sub-section (4) may, within one month from the date of receipt of the order by him, appeal, against the order to the Commissioner.

(6) The trustee of a religious institution for which a Board of Trustees has been constituted shall cease to hold office if he absents himself from three consecutive meetings of such Board of Trustees within a period of two months.



Provided that when a person who has ceased to be a trustee by reason of such absence applies for restoration within one month from the date of the last of the three meetings, the Board of Trustees may, at the meeting next after the receipt of such application, restore him to his office of trustee; but a trustee shall not be so restored more than once during his term of office."

14.This Court is of the view that the qualifications prescribed under the Act for the appointment of Trustees are not sufficient to ensure their capacity to administer the Temple and its properties effectively. The Trustees are having more powers than the Executive Officers in the Temple administration. The Executive Officers are expected to execute the decisions taken by the Trustees. The powers of the Trustees have been described under Section 28 of the HR & CE Act and the same is extracted as under:-

"28.Care required of trustee and his powers-

(1).Subject to the provisions of the Tamil Nadu Temple Entry Authorisation Act, 1947, the trustee of every religious institution is bound to administer its affairs and to apply its funds and properties in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would



deal with such affairs, funds and properties if they were his own.

(2) *A trustee shall, subject to the provisions of this Act, be entitled to exercise all powers incidental to the provident and beneficial administration of the religious institution and to do all things necessary for the due performance of the duties imposed on him.*

(3) *A trustee shall not be entitled to spend the funds of the religious institution for meeting any costs, charges or expenses incurred by 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.*

Provided that the trustee may reimburse himself in respect of such costs, charges or expenses if he is specifically permitted to do so by an order passed under Section 102."

15. Rule 14 of the Tamil Nadu Government Servant Conduct Rules, 1973 mandates that no person with political background shall be appointed as a Trustee or an employee of the temple in any cadre. A Division Bench of this Court in ***Periyannambi Narasimha Gopalan and others v. The Director, Archaeological Survey of India and others*** [2021 5 MLJ 413], has observed as follows:-

"50. ... The intention of the legislature is to appoint a person not only with impeccable integrity, devotion, sincerity,



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honesty and belief, but also a person with some basic knowledge in agamas, tradition and administration. The appointment cannot be mechanical, but it has to be made with application of mind in a transparent manner. Similarly, only a theist can be permitted to occupy any post in the temple or in the department as the occupation of any post not only requires sincerity, but also an interest and belief to augment the object of the Act. It is needless to state that the trustees so appointed must also be worthy to such appointments. Mere political recommendation or a person capable of making huge donations cannot be a criteria for being appointed as a Trustee. A true donor would be a person, who makes such donations in pursuance of his philanthropic or spiritual ideology but not for a quid pro quo appointment as a Trustee. Therefore, the trustees must also satisfy the requirements as mentioned above."

16.While dealing with a Review Application in **Rev.Aplw.Nos.169 and 170 of 2021** filed by the the State of Tamil Nadu, the Division Bench of this Court, by order dated 02.06.2023, has observed as follows:-

"18.2. ... the appointment of trustees cannot be based merely on political will. Opportunity must be given to all devotees and the process of selection 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. It is pertinent to point out that a non-hereditary trustee can occupy a post only for a specific period. However, the existence of the political domination would be evident from the repeated and continuous appointment of same persons as trustees for several years, in different posts of the Board so as to ensure such person continues in the Board would cast a spell of cloud over such appointment and hence, should be avoided."

17. Therefore, the Department should take caution while appointing the Trustees. This Court is also of the view that the Department should take steps to cast responsibility on the Trustees for the affairs of the Temple. The Trustees, so appointed, are enjoying sky-high powers in taking a decision with regard to the Temple. However, in the event of any accusation, they are left behind. Responsibility should be cast on them that in the event of any accusation, the Trustees would also be criminally prosecuted, at par with the departmental staff.



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18. Though the Department has taken a stand that proper notice has been published before the appointment of Non-Hereditary Trustees and they have followed the procedure as contemplated under the HR & CE Act, 1959, the manner in which the selection process is carried out and the qualifications prescribed under the Act is not satisfactory / sufficient. In fact, the Department is claiming that they have not even received the required applications from the eligible persons and that the applications submitted by one or two persons were considered and appointed as Trustees, even if they are not having the required qualifications. Such a response from the Department is not appreciable.

19. The Department is expected to appoint a person, who is not only with impeccable integrity, devotion, sincerity, honesty and belief, but also a person with some basic knowledge in agamas, tradition and administration of the temples. The appointment should not be a mechanical process and it has to be made with application of mind and also in a transparent manner. The Department shall ensure that mere political recommendation or a person capable of making huge donations



cannot be a criteria for being appointed as a Trustee. Separate rules have to be framed prescribing the procedures for the selection of Trustees and for the selection of the District Committee.

WP(MD)No.23655 of 2023:-

20.The petitioners in WP(MD) No.23655 of 2023 have claimed that the appointment of Non-Hereditary Trustees for the subject Temple has been made without any notice. However, from the report of the respondent Department, it appears that notice has been published and affixed in the notice board of the Temple and also uploaded in the Department's website. Though it is claimed by the petitioners that one Sethuraman/the adjacent villager has been appointed as a Non-Hereditary Trustee, the petitioners themselves agreed in their written submission that the said Sethuraman has subsequently resigned from the said post.

21.Be that as it may, admittedly, the Temple is not having any scheme and the petitioners have filed a petition in OA No.34 of 2023 to formulate a scheme. The said application is pending before the Joint



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Commissioner, HR & CE Department, Sivagangai. Therefore, there shall be a direction to the Joint Commissioner, HR & CE Department, Sivagangai, to dispose of this application, on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

WP(MD)No.29770 of 2023:-

22.Insofar as this writ petition is concerned, the petitioner wants his representation for appointment of a Trustee either in Arulmighu Thiruparankundram Murugan Kovil or in Arulmighu Solaimalai Murugan Thirukovil, Pazhamudir Solai, has to be considered, as per the proceedings of the second respondent in Naa.Kaa.No.18049/2019/N2, dated 03.09.2019.

23.It appears that in the said proceedings, a direction was issued by the Commissioner of HR & CE Department that, if any notification has been published by the authorities for the appointment of trustees, the petitioner shall make an application before the concerned Assistant Commissioner / Joint Commissioner in the prescribed format with all



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necessary enclosures and that the authorities shall consider the same in accordance with law.

24.In view of the above, liberty is granted to the petitioner to apply for the appointment of non-hereditary trustee, if any notification is published by the Department, for any Temple and on such application from the petitioner with all the required documents, the same shall be considered by the authorities, in accordance with law.

With the above observations, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

NCC : Yes/No
Index : Yes/No
Internet :Yes
VRN/gk

19.08.2024

To

1.The Principal Secretary,
Government of Tamil Nadu,
Hindu Religious & Charitable Endowments Department,
St.Geroge Fort,
Chennai – 9.



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- 2.The Commissioner,
Hindu Religious & Charitable Endowments Department,
119, Uthamar Gandhi Road,
Nungambakkam,
Chennai – 34.
- 3.The Joint Commissioner,
Madurai Division,
Madurai – 625 016.
- 4.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.
- 5.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.
- 6.The Chairman,
District Committee,
Hindu Religious and Charitable Endowments Department,
Sivagangai.
- 7.The Executive Officer,
Arulmighu Koppudayanayagi Amman Thirukovil,
Karaikudi.



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B.PUGALENDHI, J.

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Pre-Delivery Common Order made in
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19.08.2024