



W.P.(MD).Nos.552 of 2024 etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 30.10.2024

Pronounced on : 28.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).Nos.552, 6450, 17282 of 2024, 9521, 9522, 9523 of 2022
7625 of 2021 and 14912 of 2020

and

W.M.P.(MD).Nos.563, 794, 6031, 6032, 14882, 14883 of 2024, 6807,
6809, 6810, 6811, 6813, 6814 of 2022, 5792 of 2021, 12539,
12540 and 14615 of 2020

W.P.(MD).No.552 of 2024:

Mr.Venkatesan Chettiar,
Hereditary Trustee,
Sri Muthumariamman Temple,
Thayamangalam,
Sivagangai District.

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai.

2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai. ...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned circular Na.No.50838/2008/Nei4, dated 27.03.2012 issued by the 1st respondent and quash the same.

For Petitioner in
W.P(MD).Nos.17282
and 6450 of 2024 and
9521, 9522 and 9523 of 2022 : Mr.V.R.Shanmuganathan

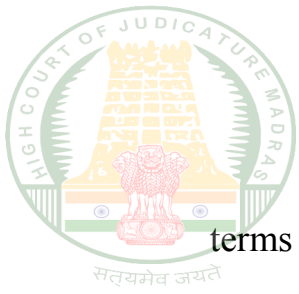
For Petitioner in
W.P(MD).No.552 of 2024 : Mr.T.S.Mohamed Mohideen

For Petitioner in
W.P(MD).No.7625 of 2021
W.P(MD).No.14912 of 2020 : Mr.A.L.Kannan

For Respondents in
all W.P.'s : Mr.K.S.Selvaganesan
Additional Government Pleader

COMMON ORDER

The common question that arises for consideration in this batch of writ petitions is as to whether a temple constituting a “Religious Institution”, within the meaning of Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowments Department Act, 1969 (hereinafter referred to as “HR & CE Act”) would qualify as a “Public Authority”, in



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terms of the definition under Section 2(h) of Right to Information Act, 2005 (hereinafter referred to as 'RTI Act').

2. The challenge in this batch of writ petitions is to the impugned Circular dated 27.03.2012, insofar as it designates trustees of the petitioner temples under the administration / governance of HR and CE Department, as “Public Information Officer” under RTI Act. The challenge is primarily on the premise that the temples do not qualify as a “Public Authority” within the meaning of Section 2(h) of the RTI Act.

3. We shall refer to the facts pertaining to Sri Muthumariamman Temple in W.P.(MD).No.552 of 2024, for the purposes of deciding the common question that arises for consideration in these writ petition viz., whether temples qualify as “Public Authority” within the meaning of Section 2(h) of the RTI Act.

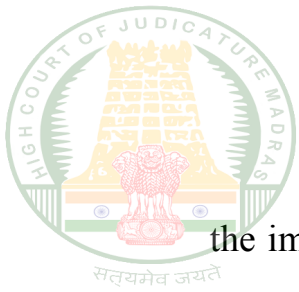
3.1. The petitioner is the hereditary trustee of Thayamangalam Muthumariamman Temple (hereinafter referred to as 'subject Temple'). The



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petitioner was appointed as hereditary trustee on 11.04.2001, after the demise of his father, who was the earlier trustee. The Muthumariamman Temple is a temple and a Public Religious Institution within the meaning of Section 6(18) read with Section 6(20) of the HR&CE Act. On assuming office, the petitioner found that requests were made seeking information under the provisions of RTI Act, some of which related to internal administration of the temple. The petitioner had enquired with the 2nd respondent viz., the Joint Commissioner as to the applicability of the RTI Act and was directed by the 2nd respondent to furnish the information in view of the impugned Circular dated 27.03.2012, whereby hereditary trustees were designated as Public Information Officer (hereinafter referred to as “PIO”) of the RTI Act.

4. The impugned Circular is challenged on the premise that the subject temple does not qualify as “Public Authority” within the meaning of Section 2(h) of the RTI Act. To the contrary, the learned Additional Government Pleader for the Respondents would submit that the challenge to



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the impugned Circular must be rejected on the premise that it is made after almost 8 years. Further, the temples also receive offerings by the devotees through hundial collection and would come within the purview of RTI Act thereby under an obligation to furnish information in terms of RTI Act.

5. Before proceeding further it may be relevant rather necessary to refer to the definition of Public Authority in terms of Section 2(h) of the RTI Act, 2005:

“2.Definitions.—In this Act, unless the context otherwise requires:

*.....
(h) ‘public authority’ means any authority or body or institution of self-government established or constituted—*

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government,

and includes any—

(i) body owned, controlled or substantially financed;



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(ii) *non-government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;*”

5.1. The scope, width, ambit and purport of the above definition was explained by the Supreme Court in the case of *Thalappalam Service Cooperative Bank Ltd., Vs. State of Kerala* reported in (2013) 16 SCC 82.

The relevant portion of the judgment is extracted hereunder:

“30. The legislature, in its wisdom, while defining the expression “public authority” under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions “means” and “includes”. When a word is defined to “mean” something, the definition is prima facie restrictive and where the word is defined to “include” some other thing, the definition is prima facie extensive. But when both the expressions “means” and “includes” are used, the categories mentioned there would exhaust themselves. The meanings of the expressions “means” and “includes” have been explained by this Court in DDA v. Bhola Nath Sharma [(2011) 2 SCC 54 : (2011) 1 SCC (Civ) 344] (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning



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which for the purpose of the Act, must invariably be attached to those words and expressions.

31. Section 2(h) exhausts the categories mentioned therein. The former part of Section 2(h) deals with:

(1) an authority or body or institution of self-government established by or under the Constitution,

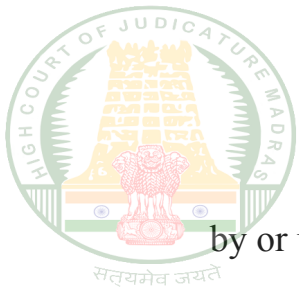
(2) an authority or body or institution of self-government established or constituted by any other law made by Parliament,

(3) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature, and

(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate Government.”

5.2. Applying the above definition to the petition temples which form the subject matter of the present batch of writ petitions, it would appear to me that temples do not fall within clauses (a) to (c) to Section 2(h) of the RTI Act, inasmuch as temples may not fall within the following categories, I may add that this was not seriously in issue/dispute:

(a) an authority or body or institution of self-government established



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by or under the Constitution,

WEB COPY (b) an authority or body or institution of self-government established or constituted by any other law made by Parliament,

(c) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature.

5.3. That would take us to the second/ inclusive part of the definition which covers the following:

(i) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government,

(ii) non-governmental organisations substantially financed directly or indirectly by funds provided by the appropriate Government.

6. The Supreme Court in Thalappalam's case also considered and explained the scope of the second / inclusive part of the definition under Section 2(h) of the RTI Act and held as under:



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“Body owned by the appropriate Government

35. A body owned by the appropriate Government clearly falls under Section 2(h)(d)(i) of the Act. A body owned, means to have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance, etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate Government.

Body controlled by the appropriate Government

36. A body which is controlled by the appropriate Government can fall under the definition of public authority under Section 2(h)(d)(i).

37. Let us examine the meaning of the expression “controlled” in the context of the RTI Act and not in the context of the expression “controlled” judicially interpreted while examining the scope of the expression “State” under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India. The word “control” or “controlled” has not been defined in the RTI Act, and hence, we have to understand the scope of the expression “controlled” in the context of the words which exist prior and subsequent i.e. “body owned” and “substantially financed” respectively.

38. The meaning of the word “control” has come up for consideration in several cases before this Court in different contexts. In State of W.B. v. Nripendra Nath Bagchi [AIR 1966 SC 447] , while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word “control” includes the power to take disciplinary action and all other incidental or consequential steps to



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effectuate this end and made the following observations: (AIR pp. 453 & 455, paras 13 & 18)

“13. ... The word ‘control’, as we have seen, was used for the first time in the Constitution and it is accompanied by the word ‘vest’ which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day-to-day working of the court but contemplates disciplinary jurisdiction over the Presiding Judge.

18. ... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal....”

The above position has been reiterated by this Court in Chief Justice of A.P. v. L.V.A. Dixitulu [(1979) 2 SCC 34 : 1979 SCC (L&S) 99] .

39. In Corpn. of the City of Nagpur v. Ramchandra [(1981) 2 SCC 714 : 1981 SCC (L&S) 455] , while interpreting the provisions of Section 59(3) of the City of Nagpur Corporation Act, 1948, this Court held as follows: (SCC p. 718, para 4)

“4. It is thus now settled by this Court that the term ‘control’ is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned.”

40. The word “control” is also sometimes used synonymously with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power.



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This Court in Shamrao Vithal Coop. Bank Ltd. v. Kasargod Pandhuranga Mallya [(1972) 4 SCC 600] held that: (SCC p. 601)

“... the word ‘control’ does not comprehend within itself the adjudication of a claim made by a cooperative society against its members.”

41. The meaning of the word “control” has also been considered by this Court in State of Mysore v. Allum Karibasappa [(1974) 2 SCC 498] , while interpreting Section 54 of the Mysore Cooperative Societies Act, 1959 and the Court held that the word “control” suggests check, restraint or influence and intended to regulate and hold in check and restrain from action.

42. The expression “control” again came up for consideration before this Court in Madan Mohan Choudhary v. State of Bihar [(1999) 3 SCC 396 : 1999 SCC (L&S) 700] , in the context of Article 235 of the Constitution and the Court held that the expression “control” includes disciplinary control, transfer, promotion, confirmation, including transfer of a District Judge or recall of a District Judge posted on ex-cadre post or on deputation or on administrative post, etc. so also premature and compulsory retirement.

43. Reference may also be made to few other judgments of this Court in Gauhati High Court v. Kuladhar Phukan [(2002) 4 SCC 524 : 2002 SCC (L&S) 555] , State of Haryana v. Inder Prakash Anand [(1976) 2 SCC 977 : 1976 SCC (L&S) 372] , High Court of Judicature of Rajasthan v. Ramesh Chand Paliwal [(1998) 3 SCC 72 : 1998 SCC (L&S) 786] , Kanhiya Lal Omar v. R.K. Trivedi [(1985) 4 SCC 628] , T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481] , Ram Singh v. UT, Chandigarh [(2004) 1 SCC 126 : 2004 SCC (L&S) 14] , etc.



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44. We are of the opinion that when we test the meaning of expression “controlled” which figures in between the words “body owned” and “substantially financed”, the control by the appropriate Government must be a control of a substantial nature. The mere “supervision” or “regulation” as such by a statute or otherwise of a body would not make that body a “public authority” within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate Government, the control of the body by the appropriate Government would also be substantial and not merely supervisory or regulatory. The powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. The management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Cooperative Societies Act.

45. We are, therefore, of the view that the word “controlled” used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-à-vis a body owned or substantially financed by the appropriate Government, that is, the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.

Substantially financed

46. The words “substantially financed” have been used in Sections 2(h)(d)(i) and (ii), while defining the expression public authority as well as in Section 2(a) of the Act, while defining the expression “appropriate Government”. A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression “substantially financed”, as such, has not been defined under the Act. “Substantial” means “in a



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substantial manner so as to be substantial". In *Palser v. Grinling* [1948 AC 291 : (1948) 1 All ER 1 (HL)] , while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that "substantial" is not the same as "not unsubstantial" i.e. just enough to avoid the *de minimis* principle. The word "substantial" literally means solid, massive, etc. The legislature has used the expression "substantially financed" in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable, etc.

47. We often use the expressions "questions of law" and "substantial questions of law" and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In *Black's Law Dictionary* (6th Edn.) the word "substantial" is defined as

"Substantial.—Of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. ... Something worthwhile as distinguished from something without value or merely nominal. ... Synonymous with material."

The word "substantially" has been defined to mean "essentially; without material qualification; in the main; in substance; materially". In *Shorter Oxford English Dictionary* (5th Edn.), the word "substantial" means "of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure, etc. having force or effect, effective, thorough". The word "substantially" has been defined to mean "in substance; as a substantial thing or being; essentially, intrinsically". Therefore the word "substantial" is not synonymous with "dominant" or "majority". It is closer to "material" or "important" or "of



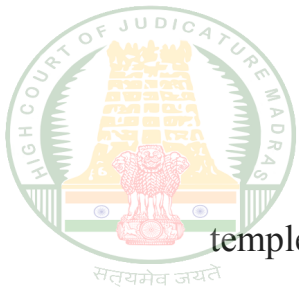
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considerable value”. “Substantially” is closer to “essentially”. Both words can signify varying degrees depending on the context.

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48. Merely providing subsidies, grants, exemptions, privileges, etc. as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD, etc. but those facilities or assistance cannot be termed as “substantially financed” by the State Government to bring the body within the fold of “public authority” under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety-five per cent grant-in-aid from the appropriate Government, may answer the definition of public authority under Section 2(h)(d)(i).”

6.1. Applying the test laid down by the Supreme Court it would be clear that the petitioner temples or for that matter temples generally are not owned, controlled or substantially financed directly or indirectly by the appropriate Government. I say so, inasmuch as degree of control that needs to be exercised by the appropriate Government for the temple to qualify as a “Public Authority” within the meaning of Section 2(h) of the RTI Act must be of a substantial nature and not merely supervisory or regulatory. In other words, the substantial control over the management and the affairs of the



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temple must be with the appropriate government. If we keep this in mind, any attempt to suggest that temples are controlled by the “appropriate Government” i.e., the Central or State Government for the purpose of Section 2(h) of the RTI Act, may fall foul of Article 25 and 26 of the Constitution of India. In this regard, it may be relevant to refer to the judgment of the Kerala High Court in the case of *A.C.Bhanunni vs. The Commissioner and others* reported in 2011 SCC Online Ker 3968 wherein it was held that power, if any, vested with the statutory authorities with regard to the temples are at the highest supervisory and any attempt to understand the provisions of the HR & CE Act, as conferring the authority with the power to exercise control over the temple would render the Act vulnerable to challenge as infringing / impairing the freedom guaranteed under Article 25 and 26 of the Constitution of India. The relevant portion of the judgment is extracted hereunder:

“17.

Having regard to the power of the MDB and the Commissioner to frame any scheme in relation to any Hindu public religious and charitable institution or endowment to which the HR &



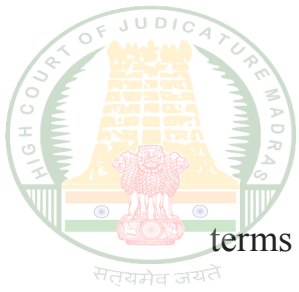
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CE Act applies, such authority and the power of supervision or control by the Commissioner or MDB is strictly confined to the provisions of the HR & CE Act, limited and regulated by jurisdictional facts in conformity with a regulatory statute. That is not a power to control, but one only to regulate. Any manner of expansion of the limits of such authority would invade the freedom and protection guaranteed under Articles 25 and 26 of the Constitution of India as laid down by the Division Bench of this Court in Padmanabha Shenoi v. Srimad Anantheswar Temple, 1984 (2) ILR Kerala 734.”

6.2. Now applying the test laid down by the Supreme Court in Thalappalam's case to determine whether temples are “substantially financed”, by the appropriate Government it must be borne in mind that the government does not finance certainly do not “substantially finance” temples in terms of the parameters laid down by the Supreme Court in Thalappalam's case for a body to be treated as “substantially financed” for the purposes of Section 2(h) of the RTI Act. Assuming any funds or subsidies, are being granted by the government for conduct of festivals, that may not satisfy the requirement of temples being “substantially financed” in



terms of Section 2(h)(d)(ii) of the RTI Act by the appropriate Government.

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As a matter of fact, it appears that it is the other way around, inasmuch as it is the temples which would have to contribute to the Government, as would be evident from a reading of the following provisions of Chapter 9 of HR&CE Act, which reads as under :

“92. Religious institution to pay an annual contribution to the Government.—(1) Every religious institution shall, from the income derived by it, pay to the Commissioner annually such contribution not exceeding 1[twelve per centum] of its income as may be prescribed in respect of the services rendered by the Government and their officers and for defraying the expenses incurred on account of such services.

(2) Every religious institution, the annual income of which, for the fasli year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is not less than five thousand rupees, shall pay to the Commissioner annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and half per centum of its income upto five lakhs rupees and four per centum of its income if the income exceeds five lakhs, as the Commissioner may determine.

(3) The annual payments referred in sub-section (1) and (2) shall be made, notwithstanding anything to the contrary contained in



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any scheme settled or deemed to have been settled under this Act for the religious institution concerned.

(4) The Government shall pay the expenses incurred for the purposes of this Act, including the—

*3[(i) * * *]*

(ii) expenses of Consultative Committees and sub-committees thereof, constituted by the Government or by any officer or authority subordinate to the Government specially authorized by them in this behalf.

(iii) cost of the publication of journals, books, annuals and descriptive accounts relating to religious institutions.

(iv) expenses of the District Committees.

93. Recovery of costs and expenses incurred on legal proceedings.— Notwithstanding anything contained in sub-section (1) of section 102, all costs, charges and expenses incurred by the Government, 2[* *] the Commissioner, 3[an Additional Commissioner], 4[a Joint Commissioner], a Deputy Commissioner 5[* * *] or an Assistant Commissioner as a party to, or in connection with, any legal proceeding in respect of any religious institution shall be payable out of the funds of such institution, except in case where a liability to pay the same has been laid on any party or other person personally and the right to reimbursement under this section has been negated in express terms.*

94. Assessment and recovery of contributions, costs, charges



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and expenses.—(1) *The contributions, costs, charges and expenses payable under sections 92 and 93 shall be assessed on and notified to the trustee of the religious institution concerned in the prescribed manner :*

Provided that if for any reason, any portion of the contribution, costs, charges and expenses has escaped assessment, the Commissioner may, within the prescribed period, serve on the trustee a notice assessing him to the portion of the contribution, costs, charges or expenses, as the case may be, due and demanding payment thereof within fifteen days from the date of such service ; and the provisions of this Act and the rules made thereunder shall, so far as may be, apply as if the assessment was made in the first instance.

(2)(a) *Such trustee may, within fifteen days from the date of the receipt of the notice under sub-section (1) or under the proviso thereto or within such further time as may be granted by the Commissioner, prefer his objection thereto, if any, to the Commissioner in writing. Such objection may relate either to his liability to pay or to the amount specified in the notice. The Commissioner shall consider such objection and give his decision confirming, withdrawing or modifying his original notice.*

(b) *Within one month from the date of the receipt of the notice of assessment, or when an objection has been preferred, within one month from the date of the decision of the Commissioner, or within*



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such further time, as may be granted by him, such trustee shall pay the amount specified in the notice under sub-section (1) or under the proviso thereto or the amount as fixed by the Commissioner on objection.

(3) If the trustee fails to pay the amount aforesaid within the time allowed, the Collector of the district in which any property of the religious institution is situate shall, on requisition made to him in the prescribed manner by the Commissioner and subject to the provisions of this section, recover such amount as if it were an arrear of land revenue.

(4)(a) On receipt of a requisition under sub-section (3), the Collector shall issue a notice to the trustee concerned—

(i) requiring him, within fifteen days form the date of the service thereof, to pay the amount mentioned in the requisition and specified in the notice ; and

(ii) stating that on default, such amount will be recovered as if it were an arrear of land revenue ;

(b) if, within the period of fifteen days aforesaid, the amount demanded is not paid, the Collector shall proceed to recover the amount specified in the notice (with the charges of collection) as if it were an arrear of land revenue.

(5) The Collector shall, on receipt of a requisition under sub-section (3), withhold the amount mentioned therein out of the tasdik or any other allowance or amount payable by the Government to the



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religious institution concerned but where the tasdik or other allowance or amount is insufficient for the purpose, the Collector shall withhold the tasdik or other allowance or amount available and recover the balance as if it were an arrear of land revenue.

(6) Places of worship, including temples and tanks and places where utsavams are performed, idols, vahanams, jewels and such vessels and other articles of the religious institution as may be necessary in accordance with the usage of the institution for purposes of worship or processions shall not be liable to be proceeded against in pursuance of sub-section (3), (4) and (5).

(7) Instead of selling the property after attachment thereof under the provisions of the 1[Tamil Nadu] Revenue Recovery Act, 1864 (1[Tamil Nadu] Act II of 1864), it shall be open to the Collector at the instance of the Commissioner to appoint a receiver to take possession of the property or such portion thereof as may be necessary and collect the income thereof until the amount sought to be recovered is realized. The remuneration, if any, paid to the Receiver, and the other expenses incurred by him shall be paid out of the income of the institution concerned.

(8) No suit, prosecution or other legal proceeding shall be entertained in any Court of law against the Government or any officer or servant of the Government for anything done or intended to be done in good faith in pursuance of this section.”



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WEB COPY 7. Here it may be necessary to deal with a judgment of this Court in

W.P.No.14692 of 2012 dated 11.06.2012 in the case of *Premanand vs Commissioner HR&CE* reported in (2012) SCC Online Mad 2016, wherein, this Court had taken a view that the State Government spend huge amounts every year for administering the Department to manage the temple and also releases grants for renovation of temples including conducting Kumbabishekams periodically. The relevant portions of the judgment is extracted hereunder:

“4. It is the case of the petitioner that a temple cannot be brought under the purview of the RTI Act. Therefore, nominating the hereditary trustee as a public information officer under the purview of the Act is unwarranted. This court is unable to accept the said contention. In the present case, the temple is a public institution. Merely because it is administered by an hereditary trustee, the public character of a temple will not disappear. Temples are clearly brought under the HR&CE Act and further, public collections are made for conducting various activities of the temple including rituals. The State Government also spends huge amounts every year for administering the department to manage the temples and also releases various grants for renovation of the temples including



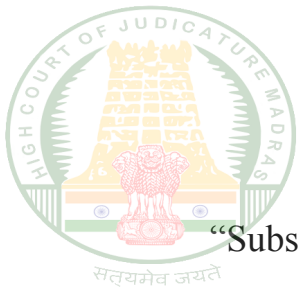
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special grants for conducting Kumbaghishekams periodically. When that is so, it cannot be said that the temple is a private institution for the purpose of the RTI Act. In fact, if the temple is substantially financed by the State either in the form of administrative expenses or in the form of non recurring expenditure, certainly, it would be the institution covered by the provisions of the Act. Under the RTI Act, even a private body substantially funded by the State is covered by the RTI Act. When an information is sought for and if the activities of the temple will be kept secret, then it may also result in gradual deterioration of the temple administration. It cannot be contended that the temple activities are private activities and not covered by the provisions of the RTI Act.”

8. While conscious, that it would only be appropriate for a Co-ordinate Bench, if it were to take a different view to refer the matter to a Larger Bench, however, I don't propose to do so in the present matter. This is in view of the order of the learned Judge is contrary to the law laid down by the Supreme Court in *Thalappalam's* case. Importantly, the above judgment of the Supreme Court is subsequent to the order of the learned Judge in *Premanand's* case, wherein the scope of the expression



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“Substantially Financed” has been held to mean that it must be of such a degree that the very existence of the body would depend on such finance.

Importantly, even the learned Judge has found that the funding is only on occasions to renovate and for conducting Kumbabishekam and administering the department. These are special occasions (Kumbabishekam), while expenses for administering the department cannot be equated with financing temples. In any view even if one assumes the above statement to be correct that may only qualify as a subsidy or a grant and would not satisfy the test of the body being in the present case “temples” being “substantially financed” as explained by the Supreme Court in *Thalappalam's* case. Importantly, the Supreme Court had rejected subsidies, grants, exemption, privileges as satisfying the test of “substantially financed” within the meaning of Section 2(h) of the RTI Act.

9. Yet another reason, why I would think the above argument ought to be rejected is in view of the fact that the burden to show that the body in the present case i.e., the temple is owned, controlled or substantially financed is



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on the applicant. However, there is nothing to indicate that the impugned circular was issued after finding that there is material adequate to discharge the burden and to arrive at a conclusion that the temples are owned, controlled or substantially financed by the appropriate Government. In this regard, it may be relevant to refer to the judgment of the Supreme Court in *Thalappalam's* case, wherein it was held as under :

Burden to show

“50 [Ed.: Para 50 corrected vide Official Corrigendum No. F.3/Ed.B.J./60/2013 dated 26-10-2013.] . The burden to show that a body is owned, controlled or substantially financed or that a non-government organisation is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Information Commission or the Central Information Commission, as the case may be, when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.

51. The powers have been conferred on the Central Information Commissioner or the State Information Commissioner



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under Section 18 of the Act to inquire into any complaint received from any person and the reason for the refusal to access to any information requested from a body owned, controlled or substantially financed, or a non-government organisation substantially financed directly or indirectly by the funds provided by the appropriate Government. Section 19 of the Act provides for an appeal against the decision of the Central Information Officer or the State Information Officer to such officer who is senior in rank to the Central Information Officer or the State Information Officer, as the case may be, in each public authority. Therefore, there is an inbuilt mechanism in the Act itself to examine whether a body is owned, controlled or substantially financed or an NGO is substantially financed, directly or indirectly, by funds provided by the appropriate authority.”

(emphasis supplied)

10. It was also brought to the notice of this Court that the orders in W.P.No.16567 of 2010 dated 01.10.2021 and W.P.(MD).No.13670 of 2021 dated 04.07.2022, wherein while dealing with the question as to whether Mutts are subject to the provisions of the RTI Act, while holding that the Mutts do not come within the purview of the Public Authority, the learned judge had observed that this Court in the case of *Arulmigu Vengeeswarar*



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Alagar Perumal and Nagathamman Devasthanam v. The Commissioner, Hindu Religious and Charitable Endowment Board and one another in

W.P.No.28960 of 2019 dated 20.12.2019, held that Mutt is a public institution, and sought to distinguish by stating that the question before this Court in W.P.No.16567 of 2010 was whether a Mutt would come within the purview of RTI Act. The following portions in W.P.No.16567 of 2010 and etc., batch is relevant and is extracted hereunder:

“61.A contra view has been taken by a learned Single Judge of this Court in the case of Hereditary Trustee, Sri Vengeeswarar Alagarperumal and Nagathamman Koil Devasthanam vs. Commissioner, HR&CE, (WP.No.28960 of 2019 dated 20.12.2019). By way of a short order, this Court held that a temple is a public institution and merely because it was administered by a hereditary trustee the public aspect of a character will not disappear. The Court noted that public contributions were being made for conducting various activities of the temple and the State Government also spends significant amount for administration of the department to manage the temples. This decision relates to a temple and is inapplicable to a Mutt. In any event, neither relevant cases nor the schemes of the HR&CE and RTI Acts have been put forth and discussed in that case.”



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11. On going through the order of this Court in W.P.No.28960 of 2019 dated 20.12.2019, no such observations is found. In any view the subject of challenge in the above writ petition relates to statutory action / proceedings of the Commissioner HR & CE, on the ground of misappropriation and mal-administration by the petitioner therein who claimed to be hereditary trustees of the said temples. This court in W.P.No.28960 of 2019 did not deal with the question as to whether temples would constitute Public Authorities for the purposes of Section 2(h) of the RTI Act.

12. In any view, it appears to me that there is a complete misdirection in equating public contributions to that of the body viz, the temples herein to that of temple being substantially financed by the appropriate Government. Collection from public cannot be equated with being financed by the appropriate Government. In this regard, it may be relevant to refer to the judgment of the Division Bench of the Kerala High Court in *A.C.Bhanunni's case*, wherein the above distinction has been noticed:

“19. Now, the question would be regarding the funds.



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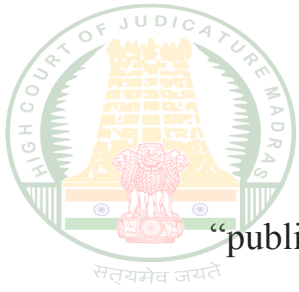


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Managing or dealing with funds collected from public is not, by itself, a statutory indicia to classify any authority or body or institution as a public authority under Section 2(h) of the RTI Act.

20. There is substantial difference between the concept of funds raised by collection from public contribution and funds provided by the appropriate Government. The quality of funds generated by collection from public can never be treated as part of funds provided by the appropriate Government. Therefore, a clear distinction has to be maintained between those two concepts and every temple or institution in relation to the affairs of which funds are collected from the public cannot, by that reason alone, be brought within the definition of "public authority" under Section 2(h) of the RTI Act which applies to establishments which are substantially funded, directly or indirectly, by funds provided by the appropriate Government. Whether a temple is a public temple or not is also not decisive."

13. Finally coming to the contention of the respondents that the challenge to impugned circular after more than a decade since it came to be issued cannot be sustained inasmuch as the petitioner must be understood to have waived / acquiesced, also may not have merit. This is in view of the fact that the consequences of the impugned Circular treating temples as



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“public authority” for the purposes of RTI Act, may touch upon constitutional rights of the petitioner and the limitations/restrictions of the respondents, thus mere acquiescence assuming, if any, may not be a reason to deny the petitioners relief. In this regard it may be relevant to refer to the judgment of the Supreme Court in the case of *Amalgamated Coalfields Ltd. and Others Versus Janapada Sabha, Chhindwara*, reported in 1961 SCC OnLine SC 362 wherein while dealing with the challenge to a notification, rejected the contention that the challenge made after almost 2 decades ought to be rejected on the ground of acquiescence. The Supreme Court rejected the above contention and held as under:

“2. It may be stated at the outset that the tax now impugned has been imposed by the local authority from 12-3-1935 and that the first occasion when its validity was attacked was in only 1957, though if the petitioners are right in their submissions their acquiescence might not itself be a ground for denying them relief. Before however we set out the points urged by the learned Attorney-General in support of the petition, it would be convenient if we narrate briefly the history of the levy of this tax.”

14. We also find that in the following writ petitions viz., W.P.(MD) No. 7625 of 2021, W.P.(MD) Nos.6450 and 17282 of 2024, there is also a



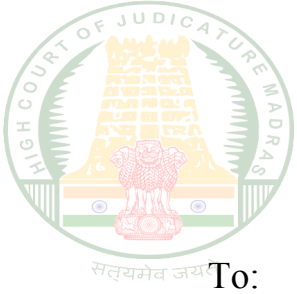
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challenge to the consequential direction issued by the 2nd respondent authority to the petitioner to furnish information. In view of the fact that the circular itself is found to be invalid, the consequential directions are also set-aside.

15. Accordingly, the writ petitions stand disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

28.01.2025

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
spp



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To:

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1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.



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MOHAMMED SHAFFIQ, J.

spp

W.P.(MD).Nos.552, 6450, 17282 of 2024,
9521, 9522, 9523 of 2022
7625 of 2021 and 14912 of 2020

28.01.2025