

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/07/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.15468 of 2003 and WRIT PETITION NO.15469 of 2003

Arulmighu Karaneeswarar Temple,
Rep. by its Executive Trustees
1. N. Annamalai
2. R. Dhanasekar
3. D. Sridhar
Saidapet, Chennai 15. .. Petitioners in both WPs

-VS-

1. The State of Tamil Nadu,
rep. by its Secretary to Govt.,
Religious Endowment Department,
Fort St. George, Chennai 600 009.

2. The Special Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam, Chennai 34.

3. The Assistant Commissioner (Chennai)
Hindu Religious and Charitable
Endowment Department,
Nungambakkam, Chennai 34.

4. The Executive Officer,
Arulmighu Mahalakshmi Thirukoil,
Besant Nagar, Chennai 90. .. Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorari as stated therein.

For Petitioners : Mr.R. Gandhi
in both WPs Senior Counsel for
Mr.R.G. Narendhiran

For Respondents 1-3 : Mr.G. Sukumaran,
in both WPs Special Govt.Pleader(HR&CE)

For Respondent-4 : Mr. Sriram
in both WPs for M/s.Kailasam Associates

:COMMON JUDGMENT

Both the writ petitions were heard together and have been disposed of by this common judgment.

2. In these two writ petitions prayer is to issue writ of Certiorari for quashing the order dated 16.5.2003 in G.O.(ID) No.105 issued by the first respondent and the consequential order dated 20.5.2003 in Na.Ka.No.14182/98 passed by the second respondent.

3. Under the first impugned order dated 16.5.2003, the first respondent, namely the State Government has rejected the appeal filed on behalf of the present petitioners against the order passed by the second respondent directing appointment of an Executive Officer for Arulmighu Karaneeswarar Temple (hereinafter referred to as "the temple") at Saidapet and under the latter order, the Government accepted the proposal made by the Special Commissioner, Hindu Religious and Charitable Endowment Department for appointment of Assistant Commissioner, HR & CE Department as "Takkar" (fit person) for the aforesaid temple.

4. The petitioners' case is as follows :-

The temple had been founded by Saiva Senguntha Community of Thirukkaranaï Village long back. The administration of the temple and the properties were being managed by the Executive Trustees elected from among the Karani Saiva Senguntha Community of the said village consisting of 6 streets at Saidapet. While the matter stood thus, a Scheme was framed by the Civil Court in O.S.No.43 of 1919. The Scheme provides for election of Executive Trustees from Karani Saiva Senguntha Community. The rules for holding election had been framed in M.P.No.1 of 1924 by the Sub Court, Chengleput. As per the said Scheme and the election rules, the Executive Trustees were being periodically elected. The Commissioner of HR & CE had initiated proposal for appointing Trustees under the Hindu Religious and Charitable Endowment Act (Act 19 of 1951), but at that stage, the Executive Trustees filed O.S. No.272 of 1960 seeking necessary declaration which was dismissed for want of notice under Section 80 CPC. In appeal, the Principal Judge observed that the disputed temple was a denominational temple and the Endowment Department had no power to appoint trustees. However, the appeal was dismissed on the technical ground of non-compliance with the provisions contained in Section 80 CPC. S.A.No.364 of 1964 was also dismissed. After coming into force of the Hindu Religious and Charitable Endowment Act (Act 22 of 1959), the Commissioner again initiated proceedings to modify the Scheme. At that stage, the Executive Trustees had filed proceedings on the ground that the temple was a religious denominational temple founded by Saiva Senguntha Community of Tirukkaranaï Village and as per the provisions contained in Section 107 of the HR & CE Act, 1959, such temple was beyond the purview of such Act. However, since the Endowment authorities were not prepared to accept such a contention, the Executive Trustees filed O.S.No.6784 of 1971 in the City Civil Court for a

declaration that Arulmigu Karaneeswarar Temple is a religious denominational temple belonging to Saiva Senguntha Community and members of such community are entitled to conduct the affairs of the temple without interference of the Endowment Department. It is alleged that such suit was decreed on 3.3.1974 and no further appeal had been preferred by the Endowment Department. While the matter stood thus, the Joint Commissioner issued notice purporting to be under Section 64(5) (a) & (b) of HR & CE Act, 1959 to modify the Scheme settled by the Civil Court in O.S.No.43 of 1919 and also to cancel or modify the rules framed as per the order dated 23.4.1924 in M.P.No.1 of 1924 arising from the very same suit. Such suo motu proceedings before the Joint Commissioner was numbered as O. A.No.20/98/B1. At that stage, the petitioners had filed W.P.No.1495 of 1999 challenging such proceedings. It is claimed in the present writ petitions that such W.P.No.1495 of 1999 is still pending. However, it has been controverted by the respondents who have stated that subsequently such writ petition has been dismissed. While O.A.No.20 of 1998 was pending, the Commissioner initiated proceedings under Section 45 of the HR & CE Act for appointment of Executive Officer. In O.A.No.20 of 1998, the Joint Commissioner formulated a draft Scheme by order dated 29.8.2001. The petitioners had filed A.P.No.29 of 2001 before the Special Commissioner, HR & CE Department (Respondent No.2). The matter was remanded for fresh disposal. It is contended by the petitioners that in all the previous proceedings it is not disputed that the temple is a denominational temple. In the proceedings taken under Section 45 of the Act, objections have been filed on behalf of the present petitioners. The present second respondent directed the Joint Commissioner to enquire into the matter and on the basis of the report furnished by the Joint Commissioner, the second respondent passed order in proceedings Rc.No.100869/2000/1/L.5 dated 19.12.2001 directing appointment of an Executive Officer for the temple. The petitioners preferred a Revision Petition before the first respondent and since no interim stay has been granted at that stage, the petitioners filed W.P.No.1 of 2002 which was disposed of by this Court on 28.1.2002 by directing the first respondent to consider the stay petition. Thereafter the Government passed an order of stay. Subsequently, however, such revision has been rejected, which is one of the orders challenged in these writ petitions.

It is further claimed that one Amirthalinga Mudaliar is in occupation of some properties belonging to temple. Even though a paltry sum is payable, Amirthalinga Mudaliar is not regularly paying the rent and certain amount fell due. The petitioners demanded such amount and a suit has been filed for eviction of such person, who in turn has filed O.S.No.6607 of 2001 and obtained an order of injunction restraining the petitioners from conducting any election. It is claimed that only after the order of injunction was vacated in July, 2002, election was conducted on 27.10.2002 and the present Trustees have been elected. However, the second respondent has illegally passed an order on the basis of a letter sent by the aforesaid Amirthalinga Mudaliar directing the Joint Commissioner to enquire into the matter and further directing the newly elected trustees not to take any decisions relating to administration of the temple and not to open the Hundi. The petitioners have filed W.P.No.45403 of 2002, which is pending before the High Court. It is claimed that inspite of the interim order of stay in the aforesaid writ petition, thus permitting the petitioners to function as Executive Trustees in the administration of temple, the first respondent under

the impugned order dated 16.5.2003 has rejected the Revision thus confirming the order dated 19.12.2001 passed by the Endowment Commissioner. Thereafter the third respondent has been appointed as Takkar and fourth respondent has been appointed as Executive Officer. The appointment of respondents 3 and 4 are being challenged.

5. The main contention raised in these writ petitions is to the effect that the temple being a denominational temple, endowment authorities have no right to interfere with the administration of such temple. It is further contended that the Endowment Commissioner had mechanically passed order in respect of appointment of the Executive Officer without considering the facts and circumstances. It is also claimed that there is no jurisdiction to appoint a "fit person" as the temple is a denominational temple.

6. Separate counter affidavits have been filed on behalf of respondents 2 and 4. The second respondent in his counter affidavit has indicated that the Scheme of administration framed in O.S.No.43 of 1919 is in law deemed to have been settled under Act 22/1959. It has been indicated that election had not been conducted within the stipulated period as the period of previous trustees has ended in November, 2001, but the election was held on 27.10.2002. Moreover, before holding the election, trustees should have obtained permission from the Scheme Court for appointment of Election Officer to hold the election. Since the election had not been held in accordance with the Scheme and the relevant provisions, the persons elected from such election are not competent to represent the temple or to manage such temple. With reference to O.S.No.6784 of 1971, it is stated that such a suit was a suit under Section 70 of the HR & CE Act and declaration that the temple is a denominational temple did not arise at all and there was no such declaration. In view of the irregularities committed, show cause notice has been issued and the previous trustees have submitted their explanation. After considering the matter in its proper perspective, the Commissioner thought it fit to appoint an Executive Officer under Section 45(1) of the Act. It is further indicated that the respondent No.1 on consideration had rightly rejected the Revision Petition. The election having been held against the Scheme decree without following the proper procedure contemplated, the Executive Trustees elected as per such illegal election did not have any right.

7. In the counter affidavit filed on behalf of fourth respondent it is stated that he has assumed charge. It is further indicated that the term of the previous trustees having been expired and the election having not been conducted in accordance with the Rules, the so called new trustees have no say in the matter and the appointment of the Executive Officer is just and proper and in accordance with the provisions contained in the HR & CE Act. It is further indicated that at no point of time, the temple had been declared as a denominational temple and no such declaratory decree had been given. Various allegations made against the previous trustees have been highlighted and it has been indicated that the Commissioner was justified in taking action.

8. In course of hearing it has been indicated that the draft

Scheme, which has been notified by the Joint Commissioner, has been subsequently finalised and the Scheme has been published in the Gazette and in view of such amendment of the Scheme, the petitioners have no further right and the writ petitions are to be dismissed on that ground alone as they became infructuous.

9. The main contention of the petitioners is to the effect that the temple being a denominational temple, the authorities under the Act have no right to interfere. For the purpose of deciding the present case. It is not necessary to consider this aspect. Even assuming that it is a denominational temple, the question to be considered is whether the Endowment Commissioner has jurisdiction to appoint an Executive Officer.

10. In A.I.R 1996 SC 1023 (PANNALAL BANSILAL PATIL AND OTHERS v. STATE OF ANDHRA PRADESH AND ANOTHER), while referring to an earlier decision reported in A.I.R. 1954 SC 282 (THE COMMISSIONER, HINDU RELIGIOUS ENDOWMENTS, MADRAS v. SRI LAKSHMINDRA THIRTHA SWAMIAR OF SRI SHIRUR MUTT), it was observed :

□ . . . In Shirur Mutt case (1954 SCR 1005 : AIR 1954 SC 282 (supra), this Court held at page 1029 (of SCR) : (at P.291 of AIR) that a law which takes away the right to administration to the religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of Article 26. So a law would not totally divest the administration of a religious institution or endowment, but the State has general right to regulate the right to administration of a religious or charitable institution or endowment; and such a law may choose to impose such restrictions whereof as are felt most acute and provide a remedy therefor.□

11. The aforesaid decision was subsequently followed by three Judges Bench of the Supreme Court reported in 1997(4) SCC 606 (SRI ADI VISHESHWARA OF KASHI VISHWANATH TEMPLE, VARANASI AND OTHERS v. STATE OF U.P. AND OTHERS) and it was observed :

□ 33. Thus, it could be seen that every Hindu whether a believer of Shaiva form of worship or of panchratna form of worship, has a right of entry into the Hindu Temple and worship the deity. Therefore, the Hindu believers of Shaiva form of worship are not denominational worshippers. They are part of the Hindu religious form of worship. The Act protects the right to perform worship, rituals or ceremonies in accordance with established customs and practices. Every Hindu has right to enter the Temple, touch the Linga of Lord Sri Vishwanath and himself perform the pooja. The State is required under the Act to protect the religious practices of the Hindu form of worship of Lord Vishwanath, be it in any form, in accordance with Hindu Shastras, the customs or usages obtained in the Temple. It is not restricted to any particular denomination or sect. Believers of Shaiva form of worship are not a denominational sect or a section of Hindus but they are Hindus as such. They are entitled to the protection under Articles 25 and 26 of the Constitution. However, they are not entitled to the protection, in particular, of clauses (b) and (d) of Article 26 as a religious denomination in the matter of

management, administration and governance of the temples under the Act. The Act, therefore, is not ultra vires Articles 25 and 26 of the Constitution.

34. It is then contended that abolition of the right to manage the Temple as Mahant is offensive of their right to religious practice and management of the Temple. This controversy is no longer res integra. This Court in *Pannalal Bansilal Pitti v. State of A.P.* (1996) 2 SCC 498, was to decide the validity of the provisions of the A.P. Act in the matter of abolishing the right of hereditary trustees and appointment of the Executive Officer and non-hereditary trustee. In *Sri Sri Sri Lakshamana Yatendrulu v. State of A.P.* (1996) 8 SCC 705, this Court was to decide the constitutionality of Sections 50 to 55 of the said A.P. Act dealing with action against erring Mathadhipati, maintenance of accounts and removal of Mathadhipati for misconduct and filling up of the resultant vacancies. After elaborate consideration, the provisions were upheld as valid and constitutional. Diverse provisions of the A.P. Act, 1987 were upheld. We need not reiterate them once over and to avoid burdening the judgment, we adopt the reasons given therein and agree with the same. For the same reasons, the need to examine in detail aforequoted provisions is obviated. Accordingly, we hold that the contention that some of the persons have customary and hereditary rights as archakas and that the Act extinguishes their rights and so is violative of Articles 25 and 26(b) and (d) of the Constitution, is untenable and devoid of substance.

35. Obviously, therefore, it was contended that in the constitution of the committees or the Board of Trustees the appellants are entitled to be nominated as members of the Board. The absence of any provision in the Act in that behalf is violative of their right to be members of the Board. The learned Judges of the High Court observed the need to consider their representation. Shri Javali, learned Senior Counsel, sought support in that behalf from *Pannalal* case and was adopted by Shri Dhavan. The A.O.P. Act relates to abolition of hereditary right of the founders of the religious institution or endowment or the Board of Trustees. That Act was based upon the Report of Justice Kondiah Commission and has abolished those rights. While the validity of the provisions was upheld, the provisions were read down to indicate that all hereditary trustees need not be painted with the same brush as having committed misconduct or mismanaged the institution or endowment. In *Pannalal* case this Court examined the question in detail and held that if in an individual case a hereditary trustee incurs any disqualification, an enquiry may be conducted and one of the members of the family of the founder may be appointed as a hereditary trustee along with non-hereditary trustees and as a Chairperson of the Board of Trustees so that the institution would be properly maintained and rituals and ceremonies conducted as per the custom, usage and practice. In the present case, the Act relates to the individual institution, namely, Sri Kashi Vishwanath Temple at Varanasi with particular reference to the mismanagement etc. by the selfsame persons. The Committee appointed by the Government had gone into and found the need for the legislative interference. As a consequence, it would be difficult to read down Section 6 to give any direction to nominate the members of the family or some of the appellants as members of the Board. On the other hand, sub-sections (2)(k) and (2)(l) of Section 6 deal with nomination of eminent Hindu scholars or local eminent persons having good knowledge and experience in the management and administration of the affairs of the Temple

and in worship, service, rituals or observance, these persons are therein, made eligible. It is for the appropriate Government to consider whether or not any of them would be eligible to be considered for nomination as one of the eight non-official members of the Board at the relevant time.[]

12. In face of such decisions, it cannot be said that under no circumstance an Executive Officer can be appointed in respect of a denominational temple. In the present case, the Commissioner has adverted to certain relevant circumstances and has come to a particular conclusion. Such decision has been affirmed by the revisional authority. It cannot be said that the reasonings given by the Commissioner are arbitrary or irrational warranting interference under Article 226 of the Constitution of India. The Commissioner has applied discretion to the particular facts and circumstances and passed order which cannot be characterised as without jurisdiction or arbitrary.

13. The matter can be viewed from another angle. The fact remains that the Scheme has been modified. It is no doubt that it is open to the party aggrieved to challenge the modification of the Scheme according to law. Until the modification is subsequently challenged, as per the modified Scheme, the Executive Officer can be appointed. In the present case, such Executive Officer having been appointed, it would not be proper to interfere with such order.

14. Learned counsel for the petitioners has also challenged the appointment of [fit person]. For the very same reasons, the appointment of fourth respondent as fit person is not open to be challenged.

15. For the aforesaid reasons, I do not find any merit in these writ petitions which are accordingly dismissed. No costs.

Index : Yes

Internet : Yes

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To

1. The State of Tamil Nadu,
rep. by its Secretary to Govt.,
Religious Endowment Department,
Fort St. George, Chennai 600 009.

2. The Special Commissioner,
Hindu Religious and Charitable
Endowment Department,

Nungambakkam, Chennai 34.

3. The Assistant Commissioner (Chennai)
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Endowment Department,
Nungambakkam, Chennai 34.

4. The Executive Officer,
Arulmighu Mahalakshmi Thirukoil,
Besant Nagar, Chennai 90.

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