

In the High Court of Judicature at Madras

Dated: 30.04.2010

Coram:

The Honourable Mr. Justice R. SUBBIAH

Writ Petition No.25651 of 2009
and M.P.Nos.1 and 2 of 2009 and 1 of 2010

1. S.K.Nataraja Gurukkal
2. S.K.Mandrachala Gurukkal
3. S.K.Maneeswara Gurukkal
4. S.K.Karthikeya Gurukkal
5. M.Ganesa Gopalakrishnan ..Petitioners

..vs..

1. The Commissioner,
Hindu Religious & Charitable
Endowments, Mahatma Gandhi Road,
Chennai-600 034.
2. The Executive Officer,
Arulmighu Mandiragiri Velayuthaswamy
Temple, Thencherimalai,
Sulur Taluk,
Coimbatore District.
3. The Executive Officer/Fit Person,
Arulmighu Mandiragiri Velayuthaswamy
Temple, Thencherimalai,
Sulur Taluk,
Coimbatore District.
4. B.Mandrachala Gurukkal ..Respondents

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records comprised in R.P.No.63/2009 dated 30.11.2009 on the file of the 1st respondent and the order dated 26.06.2009 on the file of the 2nd respondent as confirmed by the 1st respondent in R.P.No.63/2009 dated 30.11.2009, quash the same.

For Petitioners : Mr.R.Muthukumarasamy,
Senior Counsel for Mr.R.Karthikeyan

For Respondents : Mr.T.Chandrasekaran,
Spl.G.P., (HR & CE) for R1
Mr.V.Bharathidasan
for M/s.V.S.Usharani for R2
Mr.R.Thiagarajan, Senior Counsel
for Mr.P.Sugumaran for R4

ORDER

Challenging the orders passed by the 2nd respondent dated 26.06.2009, as confirmed by the 1st respondent in R.P.No.63 of 2009 dated 30.11.2009, this writ petition is filed to quash the same.

2. The facts, which are necessary to decide the issue involved in the writ petition, are as follows:

Arulmighu Mandiragiri Velayuthaswamy Temple is a denominated temple situate in Thenchermalai, Suler Taluk, Coimbatore District and the presiding deity is Lord Muruga. The 2nd respondent is the Executive Officer of the temple and the 3rd respondent is the Fit Person of the temple exercising the powers of the Board of Trustees. At present, there is no individual appointed as a fit person. The Executive Officer of the Dhandapaniamman Temple, Coimbatore, has been appointed as fit person of the temple in question. There are two types of services in the temple, namely, 'Sthanigam' and 'Guruthuvam'. The service of 'Sthanigam' would mean performance of ritual service to the main deity, namely, Moolavar, Utchavar and that the 'Sthanigam' service holders can alone recite slogans and perform Archana, Abishegam, Pushpabishegam and distribution of prasadas to the devotees, whereas the other service 'Guruthuvam' would refer to performance of Deeparadhanai during various poojas in the temple. The first petitioner is doing 'Sthanigam' service and the other petitioners are doing Parijaragam, Suyambagam, Mandira Pushpam, Panjangam and Thirumanjanam services as per the orders of the Deputy Commissioner of Hindu Religious and Charitable Endowments (HR & CE) vide proceedings Mu.Mu.No.7171/1983 dated 01.06.1983. The 4th respondent is doing 'Guruthuvam' service in the said temple.

3. Originally, the father of the petitioners, by name, Kalyana Subramania Gurukkal had been appointed by the then Board of Trustees to perform 'Sthanigam' service and also other services such as Parijaragam, Suyambagam, Mandira Pushpam, Panjangam and Thirumanjanam in the temple by a communication dated 11.12.1945. After the demise of the said Kalyana Subramania Gurukkal, petitioners 1 to 4 and one Markendeya Gurukkal, father of the 5th petitioner, were permitted to do 'Sthanigam' service along with the

Parijaragam, Suyambagam, Mandira Pushpam, Panjangam and Thirumanjanam by virtue of the proceedings of the Deputy Commissioner, Tamil Nadu HR & CE, Coimbatore in Proceedings Mu.Mu.No.7171/1983 of dated 01.06.1983.

4. The 4th respondent, who was doing Guruthuvam service in the temple, wanted to interfere with the age old religious customs and practices, meticulously observed and carried on in the temple in order to take over the performance of 'Sthanigam' service which was done by the petitioners. According to the petitioners, the 4th respondent made a complaint with the false allegations to the 2nd respondent, who placed the complaint before the 3rd respondent-Fit person discharging the duties of the Board of Trustees and ultimately after considering the representations of both parties, the fit person appeared to have passed a resolution dated 23.06.1999. But the said resolution had not been communicated to the petitioners. Based on the resolution of the 3rd respondent, the 2nd respondent, by his Proceedings dated 26.06.2009 passed an order, directing the petitioners and the 4th respondent to conduct ritual services on 'turn basis'; as per which, the 4th respondent was permitted to perform all the ritual services of the Moolavar and the Parivara Sannadhis from the first day of every Tamil month to the 15th day and the 1st petitioner was permitted to conduct all the ritual services from the 16th day of every Tamil month till the end of that Tamil month and the other petitioners, namely, the petitioners 2 to 5 were permitted to do the services as per the order of the Deputy Commissioner dated 01.06.1983.

5. Aggrieved over the said order, the petitioners have filed a Revision in R.P.No.63 of 2009 before the 1st respondent, stating that the services as performed by the petitioners and the 4th respondent are distinctive in nature and have been performed as per the custom and usage of the temple for more than five decades by the father of the petitioners and thereafter, the petitioners and the order of the 3rd respondent in merging both the services and ordering all services to be performed in fortnightly turns by the petitioners on the 4th respondent virtually amounted to interfering with the age-old practice and customs, which neither the 2nd respondent nor the 3rd respondent is empowered under the Tamil Nadu HR & CE Act, 1959, to do so. During the pendency of the said revision petition, the 4th respondent had filed W.P.No.17989 of 2009 before this Court for a mandamus, directing the 2nd respondent to implement the order dated 26.06.2009. In the said writ petition, an interim direction was given by this Court; but, in the meantime, the 2nd respondent, by a communication dated 14.10.2009, directed the 1st petitioner to hand over all the charges to the 4th respondent from 17.10.2009, which forced the petitioner to file another Revision in R.P.No.69 of 2009/D2 before the 1st respondent. On 04.11.2009, this Court disposed of W.P.No.17989 of 2009 filed by the 4th respondent

with a direction to the 1st respondent to dispose the stay petition filed by the petitioners within three weeks and the main revision itself within six weeks from the date of receipt of that order. Pursuant to which, the 1st respondent on 30.11.2009 dismissed the revision petition filed by the petitioners by confirming the original order passed by the 2nd respondent dated 26.06.2009. Aggrieved over the same, the present writ petition has been filed by the petitioners to quash the orders dated 26.06.2009 and 30.11.2009 passed by the 2nd and 1st respondents respectively.

6. Learned Senior Counsel for the petitioners submitted that the merging of both the services and ordering all services in fortnightly turns by the petitioners and the 4th respondent virtually amounted to interfering with the age old practice and customs and respondents 2 and 3 are not empowered under HR & CE Act, 1959 to merge the services performed by the petitioners and the 4th respondent. By inviting the attention of this Court to Section 28(1) of the HR & CE Act, the learned Senior Counsel submitted that the trustees are bound to administer the affairs of the temple. So far as the merging of two services is concerned, it will not fall within the purview of 'administrative functions' and hence, it would amount to interfering with the religious affairs of the temple. In this regard, the learned senior counsel has relied on the decisions reported in TILKYAT SHRI GOVIND LALJI MAHARAJ ..vs.. STATE OF RAJASTHAN (AIR 1963 SC 1638) and SESHAMMAL ..vs.. STATE OF TAMIL NADU (AIR 1972 SC 1586). Further, the learned senior counsel has also relied on the judgment reported in (1996) 9 SCC 548 (A.S.NARAYANA DEEKSHITULU ..vs.. STATE OF A.P.AND OTHERS) and contended that the religious practice is totally different from the secular affairs; and so far as the religious service is concerned, it is an integral part of the religious faith and belief and to that extent the legislature cannot intervene to regulate it; but the service of the priest (archaka) is a secular part. Therefore, the 1st respondent, for the purpose of administration of the temple, can appoint or remove the priest, but they cannot interfere with the religious practice. But, in the instant case, by merging the two different performances, the 1st respondent had interfered with the custom and usage of the temple, which was prevailing for more than five decades and the father of petitioners 1 to 4 was doing the 'Sthanigam' service in the temple pursuant to the communication dated 11.12.1945. After his demise, petitioners 1 to 4 were doing the same service along with one Markendeya Gurukkal, the father of the 5th petitioner. Therefore, by merging two separate services, the 1st respondent cannot change the age old religious practices, for which they have not been empowered under the HR & CE Act. Further, in support of his contention, the learned senior counsel has also invited the attention of this Court to the counter filed by the 4th respondent and submitted that even in the counter filed by the 4th respondent, it has been stated that the two services are distinct

and separate and under such circumstances, the impugned orders are liable to be quashed.

7. Learned Senior Counsel for the 4th respondent contended that originally the Devasthanam Dharmakartha by his order dated 02.06.1938 permitted the ancestor of the 4th respondent, viz., Alahala Sundaram, son of Alagala Sundara Pandithar to do Guruthuvam service and also permitted one Parameswara Gurukkal, son of Thethatri Gurukkal to do Sthanigam service. After Parameswara Gurukkal, his son Kunjappa Gurukkal was performing Sthanigam Service with the help of Kalyana Sundara Iyer. Therefore, from the order dated 02.06.1938, it is made clear that Sthanigam service was performed by Thethatri Gurukkal's family and not by the family of the 1st petitioner. The temple has immovable properties comprised in S.Nos.298, 234 and 235 at Vadavalli Village, Coimbatore District. The temple and its properties were managed by the ancestors of the 4th respondent and by virtue of the hereditary service rendered by his ancestors, the Inam Commissioner granted title deed T.D.No.311 in respect of the land as Devedayam Service Inam as early as 01.09.1863 in favour of the said Alahala Sundaram as Gututhuvam, the great grandfather of the 4th respondent.

8. Learned senior counsel for the 4th respondent has also invited the attention of this Court to the copy of the Inam title deed dated 01.09.1863 and the order issued by the Devasthanam Dharmakartha dated 02.06.1938 and submitted that the Sthanigam holder is lower in rank and Assistant Archaga; he has no right to enter into the sanctum sanctorum and he can do alangaram to Utsavamoortham. Moreover, the Deputy Commissioner by his communication dated 01.06.1983 permitted all the petitioners to look after Suyambagam, Paricharagam, Mandira Pushpam and Panjangan services and also Sthanigam services and he did not identify the services of each petitioner. The Inam title deed dated 01.09.1863 and the order of the Devasthanam Dharmakartha dated 02.06.1938 in favour of the ancestors of the 4th respondent would show that the family of the 4th respondent was doing service several years even prior to the appointment of the father of the petitioners. Moreover, by the impugned order dated 26.06.2009, both the petitioners and the 4th respondent were permitted to do both the services. Therefore, it cannot be construed that both the services were merged and hence, the order issued by the 2nd respondent cannot be inferred as an interference in the religious affairs.

9. The 1st and 2nd respondent filed the counters stating that the rights of the hereditary succession to the office of Archaka and the other office holders of the religious institution had been abolished by Act 2/1971 and by virtue of the said Amendment to the Principal Act, the petitioners are deemed to be the employees of the temple and they are under the disciplinary control of the trustees.

The Board of Trustees under the Act empowered to appoint temple servants, assign duties to them and control their various activities. The Executive Officer and the Fit Person are exercising administrative control over the temple servants. So far as the present case is concerned, there were lot of complaints against the petitioners and the 4th respondent stating that they were frequently quarreling themselves without attending their duties and also preventing each other from doing their service and the peaceful atmosphere of the temple was disturbed by the disorderly conduct of the petitioners and the 4th respondent. Hence, after conducting an enquiry and affording opportunity to the parties, the fit person had decided to allot duties by turn basis to protect the interest of the temple and public interest and also put an end to the problem and the 3rd respondent passed a resolution to that effect and on that basis, the 2nd respondent passed the impugned order dated 26.06.2009. All the temple servants including 'Sthanigam' and 'Guruthuvam' are under the control of the trustees. Hence, the trustees can enquire into the conduct of the temple servants and take action against them for misconduct. Therefore, it is incorrect to state that there is an interference with the religious practice of the petitioners.

10. The 4th respondent has also filed a counter stating that since there are lot of complaints against the petitioners and the 4th respondent from the public stating that there were frequent quarrels between them regarding the services, the impugned order dated 26.06.2009 was passed by assigning duties on turn basis permitting the 4th respondent to perform Guruthuvam services from 1st day to the 15th day of every Tamil month and from 16th to the end of Tamil month to the 1st petitioner. This order has been passed only to facilitate the smooth performance of the poojas.

11. Heard the learned counsel for all the parties.

12. In view of the submissions made on either side, the question that arises for consideration in this writ petition is, whether the impugned order passed by the 2nd respondent and confirmed by the 1st respondent in R.P.No.63 of 2009 dated 30.11.2009 would amount to interfering in the religious practices of the petitioners or is it an order to facilitate the smooth functioning and administration of the temple ?

13. It is the contention of the petitioners that they are doing the Sthanigam service for more than five decades from their ancestors' period, whereas the 4th respondents is doing only Guruthuvam service. The impugned order permitted the 1st petitioner as well as the 4th respondent to do both services by turn basis i.e. the 4th respondent to conduct ritual services of the Moolavar and the Parivara Sannadhis from the first day of every Tamil month to 15th day and the 1st petitioner to conduct all the ritual services from the 16th day of every Tamil month till the end of every Tamil Month and as such, both services have got merged. According

to the petitioners, the merging of both services would amount to interference in the religious practice. In support of this contention, the learned senior counsel for the petitioners has placed reliance upon the judgment reported in AIR 1963 SC 1638 (cited supra), wherein it has been held that "Since the worship in the temple and the ceremonies and festivals in it are required to be conducted according to the custom and usages of the denomination by Section 16, the authority of the Tilkayat in respect of the servants in charge of the said worship and ceremonies and festivals will have to be respected". The relevant paragraphs are as follows:

" 72. A part of Section 16 has been struck down by the High Court in so far as it refers to the affairs of the temple. This section authorises the Board to manage the properties and affairs of the temple. The High Court thought that the expression "affairs of the temple" is too wide and may include religious affairs of the temple; and since in managing these affairs of the temple, the section does not require that the management should be according to the customs and usages of the denomination, it came to the conclusion that the clause "affairs of the temple" is invalid and should, therefore, be struck down. We are not satisfied that this view is correct. In the context the expression "affairs of the temple" clearly refers to the purely secular affairs in regard to the administration of the temple. Clearly, Section 16 cannot be construed in isolation and must be read along with Section 22. That is why it has been left to the Board to manage the properties of the temple as well as the purely secular affairs of the temple, and so, this management need not be governed by the custom and usage of the denomination. If the expression "affairs of the temple" is construed in this narrow sense as it is intended to be, then there is no infirmity in the said provisions. We may add that the expression "affairs of the temple" has been used in Section 28(1) of the Madras Hindu Religious and Charitable Endowments Act No.22 of 1959 in the same sense. Therefore, we would hold that the High Court was in error in striking down the clause "affairs of the temple" occurring in Section 16.

73. The next section to consider is Section 21. This section gives to the Board complete power of appointment, suspension, removal, dismissal or imposition of any other punishment on the officers and servants of the temple or the Board, the Chief Executive Officer being exempted from the operation of this section. It has been urged before us that this section might include even the Mukhia and the Asstt.Mukhia who are essentially religious officers of the

temple concerned with the performance of religious rites and services to the idols, and the argument is that if they are made the servants of the Board and are not subjected to the discipline of the Tilkayat, that would be contrary to Arts.25(1) and 26(2) of the Constitution. On considering this arguments, we must have regard to the fact that the Mukhia and the Asstt.Mukhia are not only concerned with the religious worship in the temple, but are also required to handle jewelry and ornaments of a very valuable order which are put on the idol and removed from the idol every day, and the safety of the said valuable jewelry, is a secular matter within the jurisdiction of the Board. That is why it was necessary that the Board should be given jurisdiction over those officers in so far as they are concerned with the property of a temple. We have no doubt that in working out the Act, the Board will act reasonably and fairly by the Tilkayat and nothing will be done to impair his status or to affect his authority over the servants of the temple in so far as they are concerned with the religious part of the worship in the temple. Since the worship in the temple and the ceremonies and festivals in it are required to be conducted according to the custom and usages of the denomination by Section 16, the authority of the Tilkayat in respect of the servants in charge of the said worship and ceremonies and festivals will have to be respected. It is true that soon after the Act was passed and its implementation began, both parties appeared to have adopted unhelpful attitudes. We were referred at length to the correspondence that passed between the Tilkayat and the Committee in respect of some of these matters. We do not think it necessary to consider the merits of that controversy because we are satisfied that once the Act is upheld, it will be implemented by the Board consistently with the true spirit of the Act without offending the dignity and status of the Tilkayat as a religious head in charge of the temple and the affairs in matters of religion connected with the temple. Therefore, we do not think it would be right to strike down any part of Section 21 as suggested by the learned Attorney-General."

14. That apart, the learned senior counsel also relied upon (1996) 9 SCC 548 (cited supra).

By relying upon the said judgments, the learned senior counsel for the petitioners submitted that the conducting of two distinct and separate services by the petitioners and the 4th respondent, is a religious practice and it cannot be termed as the secular affairs of

the temple. Therefore, the merger of two services certainly would amount to interference in the religious practice and the 1st and 2^d respondents have no authority to pass the impugned orders by merging the two services.

15. Per contra, it is the contention of the respondents that the impugned orders are administrative in nature and for the smooth performance of the temple, they have been passed.

16. On a careful consideration of the materials on record, I find that the father of petitioners 1 to 4, viz., Kalyana Subramania Gurukkal was appointed by the then Board of Trustees by their communication dated 11.12.1945 to perform Sthanigam and other connected services and after the demise of the said Kalyana Subramania Gurukkal, petitioners 1 to 4 along with one Markandeya Gurukkal, the father of the 5th petitioner, were permitted to do Sthanigam Service by virtue of the Proceedings of the Deputy Commissioner, Tamil Nadu HR & CE., dated 01.06.1983. It is to be noted that the rights of the hereditary succession to the office of Archaka and other office holders of the religious institution has been abolished by the Act 2/1971 and by virtue of the said amendment to the Principal Act, the petitioners are deemed to be the employees of the temple and they are under the disciplinary control of the trustees. Therefore, there is a duty cast upon the 2nd respondent for smooth functioning of the temple. But there were lot of complaints from the public that the petitioners and the 4th respondent were quarreling between themselves with regard to the performance of the two services in the temple. In order to have an effective management of the temple and to facilitate the people to worship the deities in a peaceful atmosphere, the impugned order has been passed by the 2nd respondent by permitting the 4th respondent from the first day of every Tamil month to the 15th day and the 1st petitioner was permitted to conduct all the ritual services from the 16th day of every Tamil month till the end of that Tamil month.

17. Though a submission was made by the learned senior counsel for the petitioners that respondents 1 and 2 can control only in the case of appointing and removing the employees of the temple and not in merging two different services, I am of the view that the nature of passing the impugned order is only administrative in nature and to create a peaceful atmosphere in the temple. Moreover, since the petitioners and the 4th respondent are permitted to do the service by turn basis, it does not mean that there will be an alteration in the method of services. On the other hand, by the impugned order, the 2nd respondent has simply allowed both the parties to do both the services by turn basis. If the impugned order affects the method and mode of performing the services, in my considered view, it would amount to interference in the religious affairs. Therefore, I do not find any infirmity in the impugned orders passed by the 1st and 2nd

respondents and hence, the relief sought by the petitioner cannot be granted.

18. For the reasons stated above, the writ petition fails and accordingly, the same is dismissed. No costs. Consequently, connected M.Ps. are closed.

Sd/-
Asst.Registrar.

/true copy/

Sub Asst.Registrar.

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To

1. The Commissioner,
Hindu Religious & Charitable
Endowments, Mahatma Gandhi Road,
Chennai-600 034.
2. The Executive Officer,
Arulmighu Mandiragiri Velayuthaswamy
Temple, Thencherimalai,
Sulur Taluk,
Coimbatore District.

- 1 cc to Government Pleader, SR. 29763
1 cc to Mr.R. Karthikeyan, Advocate, Sr. 29276
1 cc to mrs. V.S. Usharani, Advocate, SR. 29449
1 cc to Mr.G. Sugumaran, Advocate, SR. 29382

W.P.No.25651 of 2009

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