

W.P.(C)No.38468 of 2023

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDHAN

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

MONDAY, THE 14<sup>TH</sup> DAY OF AUGUST 2024 / 23RD SRAVANA, 1946

W.P. (C) NO. 38468 OF 2023

PETITIONER:

MURALEEDHARAN.M

AGED 59 YEARS

S/O. LATE CHANDRAN NAIR.V, VISHNUNANDANAM, THEKKUMURI  
PO, TIRUR, MALAPPURAM DISTRICT, PIN - 676101

BY ADVS.

K.MOHANAKANNAN

D.S.THUSHARA

RESPONDENTS:

- 1 THE MALABAR DEVASWOM BOARD  
REPRESENTED BY ITS SECRETARY, HOUSE FED COMPLEX,  
ERANHIPALAM, KOZHIKODE DISTRICT, PIN - 673006
- 2 THE COMMISSIONER  
MALABAR DEVASWOM BOARD, HOUSE FED COMPLEX,  
ERANHIPALAM, KOZHIKODE DISTRICT, PIN - 673006
- 3 THE ASSISTANT COMMISSIONER  
MALABAR DEVASWOM BOARD, MALAPPURAM DIVISION, MINI  
CIVIL STATION, TIRUR, MALAPPURAM DISTRICT,  
PIN - 676504
- 4 EXECUTIVE OFFICER  
SREE VAIRAMCODE DEVASWOM, VAIRAMCODE PO, TIRUR TALUK,  
MALAPPURAM DISTRICT, PIN - 676301
- 5 VINOD KUMAR M.P.  
S/O. NAVAYAR KURUP, KIZHUVATH (H), SOUTH PALLAR,  
VAIRAMCODE (PO), MALAPPURAM DISTRICT, PIN - 676301
- 6 DILEEP K  
S/O.VELAYUDHAN, KADAVTH HOUSE, CHANDANAKAVU,  
KURUMBATHOOR PO, THIRUNAVAYA, MALAPPURAM DISTRICT,  
PIN - 676301

W.P.(C)No.38468 of 2023

7 PRAMOD T.P.  
S/O. LATE MALANDI APPUNNI, THANDAMPARAMBIL MELPATHUR,  
KURUMBATHUR (PO), MALAPPURAM DISTRICT, PIN - 676301

8 BABU P.K.  
S/O. BALAN NAIR, PACHATH KALATHIL, VAIRAMCODE (PO),  
MALAPPURAM DISTRICT, PIN - 676301

BY ADVS.

Sr. Adv.Lakshmi Narayan R.

R.RANJANIE

MOHAN C. MENON

Hariraj Madhav Rajendran M.R.H.

Prabhakaran

Manu Govind

ALINA ANNA KOSE (K/001413/2021)

AKHILA S. (K/2942/2022)

GAYATRI VISWANATHAN (MAH/5239/2021)

LAKSHMI.V.S (K/003346/2023)

KARTHIKA GANESH (K/003486/2023)

AISWARYA V. (K/001914/2021)

MAHESH V RAMAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN HEARD ON 09.04.2024,  
08.07.2024, 15.07.2024 AND FINALLY ON 17.07.2024, THE COURT ON  
14.08.2024 DELIVERED THE FOLLOWING:

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2.	Provisions under the Madras Hindu Religious and Charitable Institutions Act, 1951. (Paras.20 to 43)	17 to 33
3.	The directions contained in Ext.P7 judgment dated 29.09.2023 - Muraleedharan M. and another v. Malabar Devaswom Board and others [2023:KER:65964]. (Paras.44 to 62)	33 to 51
4.	Whether the absence of reason in Ext.P8 order dated 25.10.2023 would vitiate the process undertaken by the 2 <sup>nd</sup> respondent Commissioner pursuant to Ext.P1 notification dated 19.01.2022. (Paras.63 to 112)	52 to 86
5.	Maintainability of a writ petition under Article 226 of the Constitution of India challenging Ext.P8 order dated 25.10.2023 of the 2 <sup>nd</sup> respondent Commissioner. (Paras.113 to 122)	86 to 95
6.	Whether the eligibility criteria prescribed in Ext.P1 notification dated 19.01.2022 issued by the 2 <sup>nd</sup> respondent Commissioner inviting applications for appointment as non-hereditary trustees of Sree Vairamcode Bhagavathi Temple are at variance with the provisions under the Act of 1951. (Paras.123 to 125)	95 to 99
7.	Collateral challenge made against the guidelines dated 18.05.2004 by the 8 <sup>th</sup> respondent. (Paras.126 to 127)	99 to 102
8.	The eligibility and disqualification clause contained in the guidelines dated 18.05.2004 and Ext.P1 notification dated 19.01.2022. (Paras.128 to 151)	102 to 127
9.	A fair and transparent mechanism in the matter of appointment of non-hereditary trustees in Devaswoms/Temples, till rules are made under the Act. (Para.152 to 154)	127 to 132

**JUDGMENT****Anil K. Narendran, J.****“CR”**

The petitioner, who is a devotee of Sree Vairamcode Bhagavathi Devaswom, Thirunavaya, in Malappuram District, which is a controlled institution under the 1<sup>st</sup> respondent Malabar Devaswom Board, has filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari to quash Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, whereby respondents 5 to 8 herein have been appointed as non-hereditary trustees in the Board of Trustees of that Devaswom. The petitioner has also sought for a writ of mandamus commanding the 2<sup>nd</sup> respondent Commissioner to appoint non-hereditary trustees in Sree Vairamcode Bhagavathi Devaswom, in terms of valid applications remaining pursuant to Ext.P1 notification dated 19.01.2022, within a time frame to be fixed by this Court; and a writ of mandamus commanding the 2<sup>nd</sup> respondent Commissioner to issue an appropriate order constituting a selection committee for appointment of non-hereditary trustees in the temples (Devaswoms), which are controlled institutions under the Malabar Devaswom Board, including the nominee of the Commissioner, Executive Officer of the Devaswom, the Thantri, Melsanthi and

hereditary trustee of the Devaswom, within a time frame to be fixed by this Court, and ensure that further selection of non-hereditary trustees are made in terms of the same.

2. The petitioner submitted Ext.P2 application before the 2<sup>nd</sup> respondent Commissioner, pursuant to Ext.P1 notification dated 19.01.2022, for appointment as non-hereditary trustee of Sree Vairamcode Bhagavathi Devaswom. Respondents 5 and 6 have also submitted applications, i.e., Exts.P3 and P4 applications, pursuant to the said notification. Altogether 23 applications were received pursuant to Ext.P1 notification. Alleging that the 2<sup>nd</sup> respondent is attempting to appoint active politicians and office bearers of the ruling party as non-hereditary trustees, pursuant to Ext.P1 notification, the petitioner, along with another devotee by name Velayudhan, approached this Court in W.P.(C)No.8226 of 2022. That writ petition was disposed of by Ext.P7 judgment dated 29.09.2023 - **Muraleedharan M. and another v. Malabar Devaswom Board and others [2023:KER:65964]** - whereby the 2<sup>nd</sup> respondent Commissioner and the concerned Area Committee of Malabar Devaswom Board were directed to proceed with the appointment of non-hereditary trustees in Sree Vairamcode Bhagavathi Devaswom, strictly in terms of the disqualification and eligibility clauses in Ext.P1 notification dated

19.01.2022, and also the law laid down by this Court in **Chathu Achan K. v. State of Kerala [2022 (6) KLT 388]** and **Anantha Narayanan and another v. Malabar Devaswom Board and others [2023:KER: 9966 : 2023 KLT OnLine 1195 : 2023 SCC OnLine Ker. 1022]**.

3. In the writ petition, the grievance of the petitioner is that in total disregard to the directions issued by this Court in **Muraleedharan M. [2023:KER:65964]** - Ext.P7 judgment dated 29.03.2023 in W.P.(C)No.8226 of 2022 - the 2<sup>nd</sup> respondent Commissioner issued Ext.P8 order dated 25.10.2023, whereby the 5<sup>th</sup> respondent, who is a busy professional; respondents 6 and 8, who are active politicians; and the 7<sup>th</sup> respondent, who is having no interest in Sree Vairamcode Bhagavathi Devaswom, have been appointed as non-hereditary trustees. The 6<sup>th</sup> respondent was a party to W.P.(C)No.8226 of 2022. In that writ petition, it was specifically pointed out that the 6<sup>th</sup> respondent is an active politician and office bearer of the ruling party. In support of that contention, Ext.P8 Facebook post is produced along with that writ petition [Ext.P5 in this writ petition]. The 6<sup>th</sup> respondent is an active politician and the Local Committee Secretary of CPI(M), Chandanakkavu Branch. The document marked as Ext.P9 in this writ petition is a Facebook post of the 8<sup>th</sup> respondent, in order to

show that he is an active politician and office bearer of All India Youth Federation (AIYF) and Mandalam President of Thiroor Assembly Constituency. The 5<sup>th</sup> respondent is a busy professional, who is a Medical Representative full-time in the field of distribution of medicines and allied activities. The 7<sup>th</sup> respondent filed cases against Sree Vairamcode Bhagavathi Devaswom before this Court and various other courts and acted against the interest of the Devaswom. He has studied only up to VII Standard. After the appointment as a non-hereditary trustee of the Devaswom, the 7<sup>th</sup> respondent started misbehaving against the temple staff and created all sorts of problems in the temple.

4. On 20.11.2023, when this writ petition came up for admission, the learned Standing Counsel for Malabar Devaswom Board took notice on admission for respondents 1 to 3. Urgent notice on admission by special messenger was ordered to respondents 4 to 8, returnable by 27.11.2023. By the order dated 20.11.2023, this Court granted an interim stay of Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner, insofar as it relates to the appointment of respondents 6 and 8, and the said respondents are restrained from functioning as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, for a period of one month. The interim order granted on 20.11.2023 was

extended from time to time.

5. On 27.11.2023, when this writ petition came up for consideration, the 4<sup>th</sup> respondent Executive Officer and the 8<sup>th</sup> respondent non-hereditary trustees entered appearance through their respective counsel.

6. The 6<sup>th</sup> respondent has filed a counter affidavit dated 08.12.2023, opposing the reliefs sought for in this writ petition, producing therewith Exts.R6(A) to R6(D) documents. In the counter affidavit, it is stated that at one point in time he was actively associating with the work of CPI(M). For one term, he was elected as the Branch Secretary of Chandanakkavu Branch of CPI(M). He discontinued active work in that political party. He is no longer an office bearer of CPI(M). He discontinued active association with CPI(M) for the last couple of years. In September 2021, his term as Secretary of Chandanakkavu Branch of CPI(M) was over, and one Rahul S. Prabhu took charge as the Secretary of that Branch, as evident from Ext.R6(A) news report that appeared on 19.01.2021 in an online media called 'Athavanad Media'. In order to show that the petitioner is the Secretary of Tirur Block Congress Committee, the 6<sup>th</sup> respondent has placed on record Ext.R6(B) Facebook post by one Abraham Robin D. Daniel, dated 15.10.2020, containing a poster published by Kerala



Pradesh School Teachers Association, which is a trade union having clear political affiliation to the Indian National Congress. In order to show that the petitioner has recently participated in the INTUC Convention at Thalakkad as a speaker, the 6<sup>th</sup> respondent has placed on record Ext.R6(C) photographs. In that meeting, the Mahila Congress Mandalam Committee took charge. In order to show that the petitioner attended the INTUC Convention on 03.11.2023 as a speaker, Ext.R6(D) photograph is placed on record.

7. The learned Standing Counsel for Malabar Devaswom Board has placed on record a counter affidavit dated 10.12.2023, on behalf of the 2<sup>nd</sup> respondent Commissioner, opposing the reliefs sought for in this writ petition, wherein it is contended that Ext.P8 order has been issued after specifically adverting to the observations and directions in Ext.P7 judgment of this Court dated 29.09.2023 in W.P.(C)No.8226 of 2022. Though Ext.P8 order does not, in explicit terms, refer to Ext.P7 judgment and directions contained therein, the 2<sup>nd</sup> respondent passed that order after fully complying with the directions contained in that judgment and considering the factual and legal aspects. In the counter affidavit, it is pointed out that the petitioner can challenge Ext.P8 order before the State Government by invoking the statutory remedy

provided under Section 99 of the Madras Hindu Religious and Charitable Endowments Act, 1951.

8. The 4<sup>th</sup> respondent, the Executive Officer of Sree Vairamcode Bhagavathi Devaswom, has filed a counter affidavit dated 06.12.2023, producing therewith Exts.R4(a) and R4(b) documents. The document marked as Ext.R4(a) is a complaint dated 01.11.2023 made before the 2<sup>nd</sup> respondent Commissioner by the employees of Sree Vairamcode Bhagavathi Devaswom against the 7<sup>th</sup> respondent, through the 4<sup>th</sup> respondent. The 4<sup>th</sup> respondent forwarded that complaint to the 2<sup>nd</sup> respondent along with a covering letter dated 05.11.2023. The document marked as Ext.R4(b) is a complaint dated 10.11.2023 made by the 4<sup>th</sup> respondent, before the 2<sup>nd</sup> respondent Commissioner, about the behaviour of the 7<sup>th</sup> respondent in the meetings of the Board of Trustees.

9. The petitioner has filed a reply affidavit dated 21.12.2023 to the counter affidavit filed by the 6<sup>th</sup> respondent, wherein it is stated that he was holding the post of Secretary of Tirur Block Congress Committee up to 2020 and thereafter, he was not an office bearer of any political party. He was the Convener of the Kerala Pradesh School Teachers Association, which is only an association of employees and not a political party. Since he is not

an office bearer of the Mahila Congress, his participation in the convention on 23.09.2023 has no relevance.

10. The 7<sup>th</sup> respondent has filed a counter affidavit dated 18.12.2023, opposing the reliefs sought for in this writ petition, producing therewith Ext.R7(a) complaint dated 08.12.2023 made by an employee of Sree Vairamcode Bhagavathi Devaswom complaining non-payment of subsistence allowance during the period of suspension, raising allegations against the 4<sup>th</sup> respondent Executive Officer.

11. The 8<sup>th</sup> respondent has filed a counter affidavit dated 19.12.2023, opposing the reliefs sought for in this writ petition, producing therewith Exts.R8(a) to R8(c) documents. The document marked as Ext.R8(a) is a poster published by Kerala Pradesh School Teachers Association, Tirur Sub Committee, regarding the election of the petitioner as the General Secretary of Tirur Block Congress Committee. In the counter affidavit, it is alleged that the petitioner is a political activist, who is active in 'Balajana Gandhi Darshan Vedi'. He is an office bearer of the District Committee of that organisation. He is also the Chairman of Gandhidarshan Balajana Vedi Advisory Committee, Malappuram District, from 11.03.2020, as evident from Ext.R8(b) Facebook post. He is also an active worker of the trade union Indian National

Trade Union Congress (INTUC), as evident from Ext.R8(c) photograph taken on 03.11.2023. In the counter affidavit it is stated that the 8<sup>th</sup> respondent was working as a Fitness Trainer in Abu Dhabi from 2014 to 2020. He returned after losing his job. He is presently conducting a small dairy farm with a few cows in his residential property. He is interested in the affairs of the temple. He is not an active political worker or an office bearer of a political party. The allegation raised against him is regarding his connection with the All India Youth Federation (AIYF), which is not a political organisation as referred to in Ext.P1 notification. The AIYF is an organisation of the youth. In the counter affidavit, it is contended that, Ext.P1 guidelines are issued without an enabling power to do so. The 2<sup>nd</sup> respondent Commissioner has issued the said guidelines in violation of the parental statute, especially the provisions contained in Section 46 of the Madras Hindu Religious and Charitable Endowments Act, 1951. Therefore, Ext.P1 has to be ignored.

12. The petitioner has filed a reply affidavit dated 21.12.2023 to the counter affidavit filed by the 2<sup>nd</sup> respondent, wherein it is stated that Ext.P8 order of the 2<sup>nd</sup> respondent Commissioner does not say anything about Ext.P7 judgment of this Court in **Muraleedharan M. [2023:KER:65964]**. The said

order does not even refer to the directions issued by this Court in that judgment. Since the 2<sup>nd</sup> respondent flouted the directions contained in Ext.P7 judgment while passing Ext.P8 order, the alternative remedy available under the statute will not be a bar in the petitioner invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. In the reply affidavit, the petitioner has pointed out that the counter affidavit filed by the 4<sup>th</sup> respondent Executive Officer discloses a sorry state of affairs in Sree Vairamcode Bhagavathi Devaswom, at the instance of the 7<sup>th</sup> respondent, who misbehaved towards the staff of the Devaswom. He also misbehaved in the first meeting of the Board of Trustees of the Devaswom. On account of the filing of the counter affidavit dated 06.12.2023, the Executive Officer has been transferred from that Devaswom, based on an order passed by the 2<sup>nd</sup> respondent Commissioner.

13. The petitioner has filed a reply affidavit dated 21.12.2023 to the counter affidavit filed by the 8<sup>th</sup> respondent, wherein it is stated that the petitioner was holding the post of Secretary of Tirur Block Congress Committee up to the year 2020. Thereafter, he is not an office bearer of any political party. He was the Convener of the Kerala Pradesh School Teachers Association, which is only an association of employees and not a political party.

Ext.R8(a) poster produced along with the counter affidavit filed by the 8<sup>th</sup> respondent is of the year 2020. The Gandhi Darshan Vedi mentioned in Ext.R8(b) Facebook post and Ext.R8(c) photograph is not a political organisation owing allegiance to any political party. In the counter affidavit dated 19.12.2023, the 8<sup>th</sup> respondent has not disputed the fact that he is the Mandalam Secretary of AIYF, which is the youth federation of CPI(M). The 8<sup>th</sup> respondent declared on 24.05.2023 in Ext.P9 Facebook post that he was elected as a non-hereditary trustee of Sree Vairamcode Bhagavathi Devaswom. In the photograph, the 8<sup>th</sup> respondent is moving with a red cap and flag.

14. The 7<sup>th</sup> respondent has filed I.A.No.2 of 2024 for accepting Ext.R7(b) letter dated 21.10.2021 of the 2<sup>nd</sup> respondent Commissioner, addressed to the 4<sup>th</sup> respondent Executive Officer, Sree Vairamcode Bhagavathi Devaswom, obtained under the provisions of the Right to Information Act, 2005.

15. The 8<sup>th</sup> respondent has filed an additional affidavit dated 03.04.2024, producing therewith Ext.R8(d) guidelines dated 18.05.2024 issued by the 2<sup>nd</sup> respondent Commissioner, which is one issued pursuant to the direction contained in the judgment of this Court dated 01.04.2004 in O.P.No.6131 of 2003 - **P.S. Raveendran v. State of Kerala and others [2007 (3) KHC**

**780]**. Relying on the said judgment, it is contended that the said guidelines are issued without any enabling power.

16. On 09.04.2024, this writ petition was listed along with W.P.(C)No.28126 of 2023 and 475 of 2024 in respect of Thootha Temple, another controlled institution under the Malabar Devaswom Board.

17. Heard arguments of the learned counsel for the petitioner, the learned Senior Counsel for respondents 1 to 3, the learned Senior Counsel for the 6<sup>th</sup> respondent and the respective counsel for respondents 7 and 8. On 08.07.2024, the learned Standing Counsel for Malabar Devaswom Board handed over the files relating to Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner, which was originally made available for the perusal of this Court on 07.03.2024, pursuant to the direction contained in the order dated 27.02.2024. The Registry was directed to retain the same.

18. The learned counsel for the petitioner contended that Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, is one issued in clear violation of the directions contained in Ext.P7 judgment in **Muraleedharan M. [2023:KER:65964]**, as contended in Ground B of this writ petition. Ext.P7 judgment was one rendered

taking note of the law laid down by this Court in **Chathu Achan K. [2022 (6) KLT 388]** and **Anantha Narayanan [2023:KER: 9966]**. Respondents 5 to 8 are not legally entitled to be appointed as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, as per the disqualification and eligibility clauses in Ext.P1 notification dated 19.01.2022 issued by the 2<sup>nd</sup> respondent Commissioner.

19. The learned Senior Counsel for the 6<sup>th</sup> respondent and the learned counsel for the 8<sup>th</sup> respondent contended that the writ petition does not contain any specific allegations regarding any disqualification of respondents 6 and 8 for being appointed as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, with reference to clauses (3) and (4) of Ext.P1 notification dated 19.01.2022 issued by the 2<sup>nd</sup> respondent Commissioner. The learned counsel for the 7<sup>th</sup> respondent contended that though a higher educational qualification is an added advantage, the fact that the 7<sup>th</sup> respondent had studied only up to VII Standard is not a disqualification for being appointed as a non-hereditary trustee of the Devaswom. The learned Senior Counsel for Malabar Devaswom Board contended that the appointment of respondents 5 to 8 as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom is strictly in accordance with law and Ext.P8 order of



the 2<sup>nd</sup> respondent Commissioner is one issued after specifically advertent to the observations and directions contained in Ext.P7 judgment, as stated in paragraph 5 of the counter affidavit filed by respondents 1 and 2. The absence of reasons in Ext.P8 order would not vitiate the process undertaken by the 2<sup>nd</sup> respondent Commissioner pursuant to Ext.P1 notification. In view of the statutory remedy provided under Section 99 of the Madras Hindu Religious and Charitable Endowments Act, the petitioner cannot challenge Ext.P8 order by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. Further, the eligibility criteria prescribed in Ext.P1 notification are at variance with the provisions under the Madras Hindu Religious and Charitable Endowments Act. The learned counsel for the 8<sup>th</sup> respondent has also raised a collateral challenge against the eligibility criteria prescribed in Ext.P1 notification.

20. Provisions under the Madras Hindu Religious and Charitable Institutions Act, 1951:- The Madras Hindu Religious and Charitable Endowments Act, 1951 is enacted to provide for the better administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras. The Act received the assent of the President on 27.08.1951. By the Kerala Adoption of Laws Order, 1956 the provisions under the

said Act have been made applicable to Hindu Religious and Charitable Institutions and Endowments in the Malabar District.

21. Clause (11) of Section 6 of the Madras Hindu Religious and Charitable Endowments Act defines the term 'person having interest'. As per sub-clause (b) of clause (11) of Section 6, in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat shall fall under the definition of 'person having interest'.

22. Clause (9) of Section 6 of the Act defines the term 'hereditary trustee' to mean the trustee of a religious institution succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force. Clause (19) of Section 6 defines the term 'trustee' to mean any person or body by whatever designation known in whom or in which the administration of a religious institution is vested, and includes any person or body who or which is liable as if such person or body were a trustee.

23. The provisions contained in Chapter II of the Act were substituted by the Madras Hindu Religious and Charitable

Endowments (Amendment) Act, 2008 (Act 31 of 2008), which deals with the Malabar Devaswom Board and its officers. Section 7B of the Act deals with qualification for membership in the Malabar Devaswom Board. In view of the provisions contained in Section 7B, a person shall be qualified for nomination or election as a member of the Board only if he is a permanent resident of the Malabar area; professes the Hindu religion; is a believer of temple worship; and falls within the age criteria prescribed in clause (iv) of Section 7B. In view of the provisions under Section 7C, where a person has been elected or nominated as a member of the Board, before entering the office as a member, he shall take an oath before the Commissioner of the Board stating that he is a person professing Hindu religious rites and is a believer of God and temple worship. The provisions under Section 7D deal with disqualification for membership and Section 7E deals with supervening disqualifications. As per the provisions under Section 7M, the duties and functions of the Board include a duty to ensure proper maintenance and upliftment of Hindu religious institutions and to establish and maintain proper facilities in the temples for the devotees. In view of the provisions under Section 8 of the Act, all the powers and duties under this Act, in respect of various religious institutions of the Malabar area, that have been exercised

or performed by the Commissioner, Deputy Commissioners, Assistant Commissioners and Area Committees before the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008 shall vest in the Board, on its constitution. Section 8A of the Act deals with supervision and control by the Board. As per Section 9 of the Act, the Commissioner, etc. to be Hindus.

24. As per Section 22 of the Act, no person may succeed or be appointed to, or hold, the office of the trustee of a religious institution, (a) unless he professes the Hindu religion; and (b) except in the case of a hereditary trustee, unless he is not less than twenty-five and not more than seventy years of age. As per Section 23 of the Act, the trustee of a religious institution shall be bound to obey all lawful orders issued under the provisions of this Act by the Government, Board, the Commissioner, the Deputy Commissioner, the Area Committee or the Assistant Commissioner.

25. Section 24 of the Act deals with the care required of the trustee and his powers. As per sub-section (1) of Section 24, subject to the provisions of the Madras 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. As per sub-section (2) of Section 24, a trustee shall, subject to the provisions of the 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. As per sub-section (3) of Section 24, 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 proceeding for, or incidental to, his removal from office or the taking of any disciplinary action against him. As per the proviso to sub-section (3) of Section 24, 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 88.

26. Section 25 of the Act deals with the preparation of the register for all institutions. As per sub-section (1) of Section 25, for every religious institution, there shall be prepared and maintained a register showing (a) the names of past and present

trustees and particulars as to the custom, if any, regarding succession to the office of trustee; (b) particulars of the scheme of administration and of the dittam or scale of expenditure; (c) the names of all offices to which any salary, emolument or perquisite is attached and the nature, time and conditions of service in each case; (d) the jewels, gold, silver, precious stones, vessels and utensils, and other movables belonging to the institution, with their estimated value; (e) particulars of all other endowments of the institution and of all title deeds and other documents; (f) particulars of the idols and other images in or connected with the institution, whether intended for worship or for being carried in processions; (g) such other particulars as may be required by the Commissioner.

27. As per sub-section (2) of Section 25 of the Act, the register shall be prepared, signed and verified by the trustee of the institution concerned or by his authorised agent and submitted by him to the Commissioner, directly in the case of math, through the Area Committee, in case the institution is subject to the jurisdiction of an Area Committee, and through the Assistant Commissioner in other cases, within three months from the commencement of this Act or from the founding of the institution, as the case may be, or within such further period as may be

allowed by the Commissioner, the Area Committee or the Assistant Commissioner. As per the proviso to sub-section (2) of Section 25, the said sub-section shall not apply where a register so signed and verified has been submitted to the Board before the commencement of this Act.

28. As per sub-section (3) of Section 25, the Area Committee or the Assistant Commissioner, if the register is submitted through it or him, may, after such inquiry as it or he may consider necessary, recommend such alterations, omissions or additions in the register as it or he may think fit. As per sub-section (4) of Section 25, the Commissioner may, after receiving the register and recommendations of the Area Committee or of the Assistant Commissioner with respect thereto and making such further inquiry as he may consider necessary, direct the trustee to make such alterations, omissions or additions in the register as the Commissioner may deem fit. As per sub-section (5) of Section 25, the trustee shall carry out the orders of the Commissioner and then submit three copies of the register as corrected to the Commissioner for approval. As per sub-section (6) of Section 25, one copy of the register as approved by the Commissioner shall be furnished to the trustee and one to the Area Committee or the Assistant Commissioner concerned, if any.

29. Section 26 of the Act deals with the annual verification of the register, As per Section 26, the trustee or his authorised agent shall scrutinise the entries in the register every year and submit it to the Commissioner for his approval, directly or through the Area Committee or through the Assistant Commissioner as the case may require, a verified statement showing the alterations, omissions or additions required in the register; and the provisions of sub-sections (3) to (6) of Section 25 shall apply in relation to such statement as they apply in relation to a register.

30. Section 27 of the Act deals with furnishing accounts, returns, etc., by the trustee. As per sub-section (1) of Section 27, the trustee of every religious institution shall furnish to the Commissioner such accounts, returns, reports or other information relating to the administration of the institution, its funds, property or income, or moneys connected therewith, or the appropriation thereof, as the Commissioner may require and at such time and in such form as he may direct. As per sub-section (2) of Section 27, the powers conferred by sub-section (1) may also be exercised by the Assistant Commissioner in the case of religious institutions other than maths, and by the Area Committee in the case of institutions subject to its jurisdiction.

31. Section 29 of the Act deals with inspection of properties



or documents. As per sub-section (1) of Section 29, the Commissioner or any officer or other person deputed by the Commissioner in this behalf may inspect all movable and immovable property belonging to, and all records, correspondence, plans, accounts and other documents relating to any religious institution. As per sub-section (2) of Section 29, the powers conferred by sub-section (1) may also be exercised, in the case of religious institutions other than maths, by the Assistant Commissioner and in the case of institutions over which an Area Committee has jurisdiction, by any member of the Committee authorised by it in this behalf. As per sub-section (3) of Section 29, it shall be the duty of the trustee of the institution concerned and all officers and servants working under him, his agent and any person having concern in the administration of the institution, to afford all such assistance and facilities as may be necessary or reasonably required in regard to any inspection made in pursuance of sub-section (1) or sub-section (2), and also to produce for inspection any movable property or document referred to in sub-section (1), if so required.

32. Section 29 of the Act deals with the alienation of immovable trust property. As per sub-section (1) of Section 29, any exchange, sale or mortgage and any lease of any immovable

property belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. As per the first proviso to sub-section (1) of Section 29, before such sanction is accorded the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner. As per the second proviso to sub-section (1) of Section 29, the Commissioner, if he is satisfied that owing to any emergency or for some other reason to be specified in the order according sanction, it is not reasonably practicable to follow the procedure prescribed in the foregoing proviso, may, with the previous sanction of the Government, dispense with such procedure.

33. As per sub-section (2) of Section 29 of the Act, when according such sanction, the Commissioner may impose such conditions and give such directions as he may deem necessary regarding the utilization of the amount raised by the transaction the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period. As per sub-

section (3) of Section 29, a copy of the order made by the Commissioner under this section shall be communicated to the State Government and to the trustee and shall be published in such manner as may be prescribed. As per sub-section (4) of Section 29, the trustee may within three months from the date of his receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order, appeal to the State Government to modify the order or set it aside. As per sub-section (5) of Section 29, nothing contained in this section shall apply to the inams referred to in Section 35.

34. Section 39 of the Act deals with Trustees and their number and term of office. As per sub-section (1) of Section 39, where a religious institution included in the list published under Section 38 or over which no Area Committee has jurisdiction, has no hereditary trustee, the Commissioner shall constitute a Board of Trustees consisting of not less than three and not more than five persons appointed by him. As per sub-section (2) of Section 39, where, in the case of any such institution having a hereditary trustee or trustees; the Commissioner after notice to such trustee or trustees, and after such enquiry as he deems adequate, considers for reasons to be recorded, that the affairs of the institution are not, and are not likely to be, properly managed by

the hereditary trustee or trustees, the Commissioner may, by order appoint such number of non-hereditary trustees as he thinks necessary, so however that the total number of trustees does not exceed five. As per sub-section (3) of Section 39, every trustee appointed under sub-section (1) and subject to the result of an application, if any, filed under sub-section (4) every non-hereditary trustee appointed under sub-section (2) shall hold office for a term of two years, unless in the meanwhile the trustee is removed or dismissed or his resignation is accepted by the Commissioner or he otherwise ceases to be a trustee.

35. As per sub-section (4) of Section 39 of the Act, where the Commissioner by order appoints a non-hereditary trustee or trustees the hereditary trustee or trustees may, within thirty days of the receipt of the order, file an application to the court to set aside or modify such order. As per sub-section (5) of Section 39, where a vacancy arises in the office of a non-hereditary trustee appointed under sub-section (2) the Commissioner shall not fill up such a vacancy unless, for reasons to be recorded, he considers it necessary to do so. A non-hereditary trustee appointed in the vacancy shall be deemed to have been appointed under sub-section (2), and the provisions of sub-sections (3) and (4) shall apply accordingly.

36. Section 40 of the Act deals with the Chairman. As per sub-section (1) of Section 40, in the case of a religious institution for which a Board of Trustees is constituted under sub-section (1) of Section 39, the Board shall elect one of its members to be its Chairman. As per sub-section (2) of Section 40, in the case of any other religious institution having more than one trustee, the trustees of such institution shall elect one of their members to be the Chairman. As per sub-section (3) of Section 40, a Chairman elected under sub-section (1) or sub-section (2) shall hold office for such period as may be prescribed.

37. Section 41 of the Act deals with the power of the Area Committee to appoint Trustees. As per sub-section (1) of Section 41, in the case of any religious institution over which an Area Committee has jurisdiction, the Area Committee shall have the same power to appoint trustees as is vested in the Commissioner in the case of a religious institution referred to in Section 39. As per the proviso to Sub-section (1) of Section 41, the Area Committee may, in the case of any institution which has no hereditary trustee, appoint a single trustee. As per sub-section (2) of Section 41, the provisions of sub-section (3) of Section 39 and Section 40 shall apply to the trustee or trustees appointed, or the Board of Trustees constituted, by the Area Committee as they

apply in relation to the trustee or trustees appointed, or the Board of trustees constituted, by the Commissioner.

38. As per Section 42 of the Act, the power to appoint trustees under Section 39 or Section 41 Shall be exercisable notwithstanding that the scheme, if any, settled, or deemed under this Act to have been settled for the institution contains provisions to the contrary.

39. Section 45 of the Act deals with the power to suspend, remove or dismiss trustees. As per sub-section (1) of Section 45, the Deputy Commissioner in the case of any religious institution over which an Area Committee has jurisdiction, and the Commissioner in the case of any other religious institution, may suspend, remove or dismiss any hereditary or non-hereditary trustee or trustees thereof (a) for persistent default in the submission of budgets, accounts, reports or returns, or; (b) for wilful disobedience of any lawful order issued under the provisions of the Act by the State Government, the Commissioner or Deputy Commissioner, the Area Committee or the Assistant Commissioner; or (c) for any malfeasance, misfeasance, breach of trust or neglect of duty in respect of the trust; or (d) for any misappropriation of, or improper dealing with, the properties of the institution; or (e) for unsoundness of mind or other mental or

physical defect or infirmity which unfits him for discharging the functions of the trustee. As per sub-section (2) of Section 45, when it is proposed to take action under sub-section (1), the Commissioner or the Deputy Commissioner, as the case may be, shall frame charges against the trustee concerned and give him an opportunity of meeting such charges, of testing the evidence in his favour; and the order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge with the reasons therefor.

40. Section 46 of the Act deals with disqualifications of trustees. As per sub-section (1) of Section 46, a non-hereditary trustee shall cease to hold his office if he (a) is sentenced by a Criminal Court to transportation or to imprisonment for a period of more than six months, for any offence other than an offence not involving moral turpitude, such sentence not having been cancelled or reduced to a period of six months or less, or the offence not having been pardoned, provided that State Government may direct that such sentence shall not operate as a disqualification; or (b) applies to be adjudicated or is adjudicated an insolvent. As per sub-section (2) of Section 46, in cases of doubt or dispute, the Deputy Commissioner shall determine whether a trustee is disqualified under sub-section (1) or not. As

per sub-section (3) of Section 46, if a hereditary trustee becomes subject to any of the disqualifications described in sub-section (1) the Deputy Commissioner may supersede the trustee. As per sub-section (4) of Section 46, any person affected by an order of the Deputy Commissioner under sub-section (2) or sub-section (3) may, within one month from the date of the receipt of the order by him, appeal against the order to the Commissioner.

41. Section 47 of the Act deals with filling up of vacancies in the office of hereditary trustee. As per sub-section (1) of Section 47, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. As per sub-section (2) of Section 47, when a temporary vacancy occurs in such an office by reason of the suspension of the hereditary trustee under sub-section (1) of Section 45 or by reason of his supersession under sub-section (3) of Section 46, the next in the line of succession shall be entitled to succeed and discharge the functions of the trustee until his disability ceases.

42. As per sub-section (3) of Section 47 of the Act, when a permanent or temporary vacancy occurs in such an office and there is a dispute respecting the right of succession to the office, or when such vacancy cannot be filled up immediately, or when a



hereditary trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or when a hereditary trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unfit for discharging the functions of the trustee, the Deputy Commissioner may appoint a fit person to discharge the functions of the trustee of the institution until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office or for such shorter term as the Deputy Commissioner may direct.

43. As per Explanation to sub-section (3), in making any appointment under this sub-section, the Deputy Commissioner shall have due regard to the claims of members of the family, if any, entitled to the succession. As per sub-section (4) of Section 47, any person affected by an order of the Deputy Commissioner under sub-section (3) may, within one month from the date of the receipt of the order by him, appeal against the order, to the Commissioner. As per sub-section (5) of Section 47, nothing in this section shall be deemed to affect anything contained in the Madras Court of Wards Act, 1902.

44. The directions contained in Ext.P7 judgment dated 29.09.2023 - Muraleedharan M. and another v. Malabar

Devaswom Board and others [2023:KER:65964]:- Ext.P7

judgment in **Muraleedharan M. [2023:KER:65964]** is one rendered by a Division Bench of this Court in which one among us [Anil K. Narendran, J] was a party. The petitioner herein along with another had approached this Court in that writ petition seeking a writ of mandamus commanding the 2<sup>nd</sup> respondent Commissioner to appoint the non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, Thirunavaya, strictly adhering to the disqualifications prescribed in clauses 3(a) to 3(j) of Ext.P1 notification; a writ of mandamus appointing an Observer from this Court to complete the selection process pursuant to Ext.P1 notification and to file a report in that regard within a time frame to be fixed by this Court; a writ of mandamus commanding respondents 1 to 3 not to appoint non-hereditary trustees, who are having disqualifications as per Ext.P1 notification and to make the selection pursuant to Ext.P1 by assessing the merit of the candidates and purely on the basis of the same; a writ of mandamus commanding the 2<sup>nd</sup> respondent not to appoint respondents 5 to 7 therein as non-hereditary trustees, in the light of the documents produced in that writ petition as Exts.P4 to P6; and a writ of mandamus commanding the 2<sup>nd</sup> respondent to conduct interview pursuant to Ext.P1 notification and to produce

the results of the same before this Court and appoint qualified persons as non-hereditary trustees within a time frame to be fixed by this Court.

45. In W.P.(C)No.8226 of 2022, it was alleged that respondents 5 to 7 therein, who are active politicians and office bearers, as evident from Exts.P7 to P9 documents in that writ petition, are declared and decided to be appointed, even before conducting an interview. A list of those persons has already been submitted by the ruling party and the interview will be a mockery. There are altogether 23 applicants for the post. Four persons have to be selected from among the 23. The writ petitioners are fully qualified as per Ext.P1 notification and they do not have any disqualification enumerated in clauses 3 (a) to (j). The petitioners contended that the decision of the Full Bench of this Court in **Gopalakrishnan Nair v. State of Kerala [1999 (3) KLT 574]** is squarely applicable to the facts of the case on hand. Respondents 1 to 3 are deviating from the prescribed standards and the administration of the temple will be in disarray if politicians are appointed. Respondents 5 to 7 therein are not devotees and not interested in the affairs of the temple.

46. Clause 3 of the notification dated 19.01.2022 (Ext.P1) issued by the 2<sup>nd</sup> respondent Commissioner deals with

disqualifications and clause (4) deals with the eligibility of a person for being appointed as non-hereditary trustee of Sree Vairamcode Bhagavathi Devaswom. Clauses (3) and (4) of Ext.P1 notification read thus;

“3. താഴെ പ്രസ്താവിച്ച അയോഗ്യതകളിൽ ഏതെങ്കിലുമൊന്നോ, എല്ലാമോ ഉള്ള ആളുകൾക്ക് നിയമനത്തിന് അർഹതയുണ്ടായിരിക്കുന്നതല്ല. അതിനാൽ അവർ അപേക്ഷിക്കേണ്ടതില്ല.

a) സദാചാരദൃഷ്ടമുൾപ്പെടാത്ത വല്ല കുറ്റത്തിനും നാടുകടത്തിൽ ശിക്ഷയ്ക്കോ, ആറു മാസത്തിലധികമായ ഒരു കാലത്തേക്കുള്ള തടവുശിക്ഷയ്ക്കോ ഒരു ക്രിമിനൽ കോടതി ശിക്ഷിച്ചിട്ടുള്ള ആളുകൾ അങ്ങനെയുള്ള ശിക്ഷ ദുർബലപ്പെടുത്താതിരിക്കുകയോ അല്ലെങ്കിൽ ആറു മാസമോ അതിൽ കുറവോ ആയ ഒരു കാലത്തേക്കു ചുരുക്കാതിരിക്കുകയോ അല്ലെങ്കിൽ ഗവൺമെന്റ് അങ്ങനെയുള്ള കുറ്റം മാപ്പാക്കാതിരിക്കുകയോ വീണ്ടും അല്ലെങ്കിൽ ആ ശിക്ഷ ഒരു അയോഗ്യതയായിത്തീരുന്നതല്ലെന്നു ഗവൺമെന്റ് കൽപ്പിക്കാതിരിക്കുകയോ ചെയ്യുമ്പോൾ.

b) ദീവാളിയായി വിധി കൽപ്പിക്കപ്പെടുകയോ അല്ലെങ്കിൽ അങ്ങിനെ വിധി കൽപ്പിച്ചു കിട്ടുന്നതിന് അപേക്ഷിക്കുകയോ ചെയ്തിരിക്കുന്ന ആളുകൾ.

c) മുമ്പുതന്നെ വല്ല കട്ടലായികളുടേയോ ക്ഷേത്രത്തിനോടു ചേർത്ത് പ്രത്യേക ദാനസ്വത്തുക്കളുടേയോ ട്രസ്റ്റികളായിട്ടുള്ള ആളുകൾ.

d) മുമ്പുതന്നെ വല്ല ക്ഷേത്രത്തിന്റേയും ട്രസ്റ്റികളായിരിക്കുകയും ആക്ട് പ്രകാരം ഏർപ്പെടുത്തപ്പെട്ട കാര്യനിർവ്വാഹക ബോർഡിനാലോ, അധികാരസ്ഥന്മാരോലോ നീക്കം ചെയ്യുകയോ, പിരിച്ചയക്കുകയോ ചെയ്യപ്പെടുകയും ചെയ്ത ആളുകൾ.

e) ഒരു ട്രസ്റ്റിയുടെ പ്രവൃത്തികൾ നിർവ്വഹിക്കുന്നതിന് തങ്ങളെ അയോഗ്യരാക്കിത്തീർക്കുന്ന ചിത്തഭ്രമമോ, മാനസികമോ, കായികമോ ആയ മറ്റു ദൃഷ്ടമോ, ശേഷികേടോ ഉള്ള ആളുകൾ.

f) തൊഴിൽപരമായി തിരക്കുപിടിച്ചവർ.

g) സജീവ രാഷ്ട്രീയ പ്രവർത്തകർ, രാഷ്ട്രീയ പാർട്ടികളുടെ ഓദ്യോഗിക പദവികൾ വഹിക്കുന്നവർ.

- h) ദേവസ്വം സ്ഥലം/ഭൂമി/ കെട്ടിടം കയ്യേറിയവർ.  
 i) ദേവസ്വത്തിന് താൽപര്യമുള്ള വ്യവഹാരത്തിൽ പ്രതി എതിർ കക്ഷിയായിട്ടുള്ളവർ.  
 j) ദേവസ്വത്തിനെതിരായി വ്യവഹാരം ഫയൽ ചെയ്തിട്ടുള്ളവർ.”  
 “4. (a) അപേക്ഷകൾ ക്ഷേത്രം സ്ഥിതിചെയ്യുന്ന താലൂക്കിലെ സ്ഥിരതാമസക്കാരനായിരിക്കണം, വോട്ടർ പട്ടികയിലെ പേരോ, റേഷൻകാർഡിലെ വിലാസമോ ഇതിന് തെളിവായി അപേക്ഷയോടൊപ്പം ഹാജരാക്കേണ്ടതാണ്.  
 (b) അപേക്ഷകൾ സാധാരണയായി/പതിവായി ക്ഷേത്രം സന്ദർശിക്കുന്ന സ്വഭാവമുള്ള ആളായിരിക്കണം.  
 (c) അപേക്ഷകർ വിഗ്രഹാരാധനയിൽ വിശ്വസിക്കുന്ന ആളായിരിക്കണം. ക്ഷേത്രം/ക്ഷേത്രങ്ങളുടെ പുരോഗതിക്കുവേണ്ടി സജീവമായി പ്രവർത്തിക്കുന്നവരായിരിക്കണം.  
 (d) വിദ്യാഭ്യാസ യോഗ്യത തെളിയിക്കുന്നതിനുള്ള രേഖകൾ അപേക്ഷയോടൊപ്പം ഹാജരാക്കിയിരിക്കണം.” (underline supplied)

47. Clause 4 of Ext.P1 notification, which deals with the eligibility of a person for being appointed as a non-hereditary trustee of Sree Vairamcode Bhagavathi Devaswom, makes it explicitly clear that the applicant should be a regular worshipper of the temple, who is prepared to actively work for the betterment of the temple. He should be a permanent resident of the Taluk in which the temple is situated, who believes in idolatry. In view of the provisions in clause (3) of Ext.P1 notification, active politicians or those holding official positions of political parties or those who are busy with their employment are disqualified from being appointed as non-hereditary trustees of the temple. Sub-clauses (a) to (e) and (i) and (j) of clause 3 of Ext.P1 notification deals with other disqualifications of a person for being appointed as a non-hereditary trustee of the temple.

48. In **Sreedharan Nambeesan P. v. Commissioner Malabar Devaswom Board and Others [2018 (2) KLT 115]**

the issue raised before a Division Bench of this Court was whether the hereditary trustee of a temple would have any right to be given notice before a non-hereditary trustee is being appointed by the Commissioner, Malabar Devaswom Board, under Section 39(5) of the Madras Hindu Religious and Charitable Endowments Act, 1951. In paragraph 11 of the said judgment, the Division Bench held as follows;

“11. This is not to say that when the Commissioner invokes his power under Section 39(5) of the Act the Hereditary Trustee is completely divested of any say. The power vested with the Commissioner is to act fairly, judiciously and in a manner that behooves his office, being the seneschal of the various temples and institutions under his command. The power of the Commissioner being bridled by the section itself, not to act unless there is an imminent necessity to fill up the vacancies of Non-hereditary Trustee or Trustees and that too after recording such reasons in writing, show the implicit care to be invested while acting under its sanction. The vacancies are not to be filled under his whim or fancy but the Commissioner is clearly obligated to first conclude if it is necessary to do so, which can only mean to be a situation in which he thinks that the Hereditary Trustee will not be sufficient on his own to manage the affairs of the temple/institution. The competence and capability of the Hereditary Trustee or Trustees thus becomes absolutely

relevant and germane when vacancies are sought to be filled up in the posts of Non-hereditary Trustees under Section 39(5) of the Act and, therefore, the issuance of a notice of such intention by the Commissioner to the Hereditary Trustee or Trustees, though not specifically mentioned in Section 39(5), will be apposite if not to be read into its provisions as a concomitant necessity to ensure fairness in procedure. The submission of the learned Standing Counsel that the Hereditary Trustee need not be consulted at all, while acting under Section 39(5), therefore, does not appear to be on terra firma forensically.”

(underline supplied)

49. Seeking review of the judgment in **Sreedharan Nambeesan P. [2018 (2) KLT 115]**, the Commissioner Malabar Devaswom Board and others filed R.P.No.227 of 2018, contending that the words in paragraph 11 of the said judgment would give an impression that before acting under Section 39(5) of the Act, the competent authority is obligated to obtain the concurrence of the hereditary trustee.

50. In the decision in R.P.No.227 of 2018 - **Commissioner, Malabar Devaswom Board and others v. Sreedharan Nambeesan P. [2018:KER:17236]** - the Division Bench clarified that in the judgment in **Sreedharan Nambeesan P. [2018 (2) KLT 115]** what was intended was that the hereditary trustee be offered an opportunity to place his views regarding the necessity

of filling up the vacancy in the office of the non-hereditary trustee. The judgment did not say that the concurrence of the hereditary trustee is necessary but only that he may be given the opportunity to state why he thinks that there is no necessity for the Commissioner to appoint a non-hereditary trustee. The Division Bench found this apposite since as per the provisions of Section 39(5) of the Act the Commissioner shall not fill up a vacancy of a non-hereditary trustee unless he considers it necessary to do so. It was in the backdrop of this particular provision that the Division Bench said that even though the issuance of a notice to the hereditary trustee is not mandated or specifically provided under Section 39(5) of the Act, it will be desirable, to ensure fairness in procedure, that the hereditary trustee is also afforded an opportunity to place his views appropriately before final orders are passed under Section 39(5). The intention was not that the concurrence of the hereditary trustee to the proposal of the Commissioner be obtained but merely that he be given an opportunity to speak his opinion as to why he feels that there is no necessity to appoint a non-hereditary trustee in the temple. It is needless to say that since it was not the concurrence of the hereditary trustee that is required to be obtained, as per the judgment, the only obligation of the Commissioner is to afford the



hereditary trustee an opportunity to say why he feels that no necessity exists for an order under Section 39(5) of the Act, so that any vital information, which is within the domain of the hereditary trustee can also be placed for his consideration. The Division Bench further clarified that the views of the hereditary trustee are not binding on the Commissioner, as per the provisions under Section 39(5) of the Act, but merely that such views can also be elicited to aid the Commissioner while he takes a decision as to whether it is necessary to fill up the vacancy. With the above clarification, the Division Bench closed the review petition.

51. In **Gopinatha Menon (Kenathachan) v. Malabar Devaswom Board [2012:KER:16515]** a Division Bench of this Court held that recourse to Section 39(2) of the Act, is not necessary to make an appointment of a non-hereditary trustee on any ground referable to the conduct of the hereditary trustee, or otherwise, when there is a scheme governing the trust, which provides, among other things, for appointment of four non-hereditary trustees.

52. In **Chathu Achan K. v. State of Kerala [2022 (6) KLT 388]** a Division Bench of this Court in which one among us [Anil K. Narendran, J] was a party noticed that the decision of the Division Bench in **Parameshwaran Namboothiri P.M. v.**

**Commissioner, Malabar Devaswom Board [2011 (2) KHC 719]** and **Sreedharan Nambissan P. v. Commissioner, Malabar Devaswom Board [2018 (2) KLT 115]** are in the context of the provisions under sub-section (2) of Section 39 of the Act, which deals with the appointment of non-hereditary trustees in the circumstances stated in sub-section (2), which has no application when the appointment of non-hereditary trustees in a temple is governed by the provisions under the scheme framed under Section 58 of the Act. Sub-section (2) of Section 39 of the Act relates to the appointment of non-hereditary trustees in temples, where there is no scheme framed in terms of Section 58 of the Act. Once such a scheme is framed, the Malabar Devaswom Board has to see that the administration of the temple is carried on in accordance with that scheme.

53. In **Gopinatha Menon [2012:KER:16515]** the Division Bench noticed that the complaint of the petitioner, who is the Managing Trustee of the temple in question was that, persons who are appointed as non-hereditary trustees are disqualified, as they are active politicians or those clouded by allegations referable to financial misconduct. The Division Bench observed that, even if the persons who have been selected and appointed as non-hereditary trustees have any such disqualifications, it may be open

to the petitioner to move the Commissioner by pointing out such disqualifications. The Commissioner will then have to hear the petitioner and the persons against whom such allegations are made and conclude whether any such disqualification exists, warranting the removal of those persons. Therefore, the Division Bench dismissed the writ petition *in limine*, leaving that issue open.

54. In **V. Sudharsanan v. Malabar Devaswom Board and others [2012:KER:24089]** a Division Bench of this Court was dealing with a case in which one of the contentions raised by the petitioners was that the persons elected are disqualified from being appointed as non-hereditary trustees of the temple, on account of their alleged political allegiance and the fact that they are active political workers. The Division Bench noticed that the said question is essentially a question of fact, which has to be decided if any such objection is raised. Such a decision-making process has to be undertaken by the appointing authority. Therefore, if anyone among the petitioners has any objection or complaint in that regard, he may place it before the Malabar Devaswom Board, within a period of one month. If any such objection or complaint is received, the competent authority will issue notice to the non-hereditary trustees concerned and give them an opportunity of being heard and take a decision on that

issue, in accordance with law.

55. In **Suresh K. v. State of Kerala and others [2021 (2) KLT 885]**, a Division Bench of this Court observed that temple or its precincts cannot be made a place where political parties should look forward to give political asylum to their workers. The Division Bench noticed that ours being a highly politically sensitive State, hardly any person can be traced, who is completely apolitical or who may not have his own independent political views. There may be persons having permanent political ideologies or views, whereas there may be an equal number of persons who hold views according to the issues involved. Perhaps that may be the reason why Kerala has become a State of political swinging. The Division Bench made it clear that holding political views or sympathizing with a political denomination cannot be held as a disqualification for nominating anyone to such a post. On the facts of the case on hand, the Division Bench held that "even assuming that respondents 7 to 9 have some political leaning or rather they are sympathizers of a political party, that fact will not disentitle them to be considered for appointment as non-hereditary trustees. There is a clear distinction between sympathizing with a political party and indulging in active participation in the activities of the party. The taboo under sub-clause (g) of clause 3 of the

notification issued by the Commissioner will be attracted only if respondents 7 to 9 are active politicians or are office bearers of a political party, for which absolutely no evidence is forthcoming.

56. In **Chathu Achan K. [2022 (6) KLT 388]**, this Court held that the provisions of clauses (3) and (4) of the notification issued by the Commissioner make it explicitly clear that, for appointment as non-hereditary trustee of the temple, the applicant should be a regular worshipper of the temple, who is prepared to actively work for the betterment of the temple. He should be a permanent resident of the Taluk in which the temple situates, who believe in idolatry. Persons who are busy with their employment, office bearers of political parties, active politicians or those indulging in active participation in the activities of a political party cannot aspire appointment as non-hereditary trustee of the temple. Therefore, it is for the Commissioner to take necessary steps to ensure that any appointment made as non-hereditary trustee of the temples under the control of Malabar Devaswom Board is strictly in terms of the disqualification and eligibility clauses provided in similar notifications. If found necessary, the format of the application for appointment as a non-hereditary trustee in the temples under the control of Malabar Devaswom Board has to be modified in an appropriate manner, by requiring

the applicant to furnish particulars in terms of the disqualification and eligibility clauses in similar notifications. The Commissioner was directed to take necessary steps in this regard, if found necessary, after placing it before the Malabar Devaswom Board, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a certified copy of that judgment.

57. In **N.E.K. Chandrashekar Nampoodiripad v. Malabar Devaswom Board and others [2023:KER:55922]** - judgment dated 08.09.2023 in W.P.(C)No.29279 of 2023 - a Division Bench of this Court in which one among us [Anil K. Narendran, J.] was a party held that in view of the law laid down in **Chathu Achan K. [2022 (6) KLT 388]**, for appointment as non-hereditary trustee in TTK Devaswom the applicant should be a regular worshipper of the temple, who is prepared to actively work for the betterment of the temple. He should be a permanent resident of the Taluk in which the temple is situated, who believes in idolatry. Persons who are busy with their employment, office bearers of political parties, active politicians or those indulging in active participation in the activities of a political party cannot aspire appointment as non-hereditary trustee of TTK Devaswom. Therefore, the Commissioner, Malabar Devaswom Board, has to ensure that any appointments made as non-hereditary trustees in

TTK Devaswom, which is a controlled institution under the Board, are strictly in terms of the disqualification and eligibility clauses provided in Ext.P1 notification dated 10.07.2023.

58. In **Anantha Narayanan and another v. Malabar Devaswom Board and others [2023:KER: 9966 : 2023 KLT OnLine 1195 : 2023 SCC OnLine Ker 1022]**, a Division Bench of this Court in which one among us [Anil K. Narendran, J] was a party, held that when clause 3(7) of Ext.R6(a) notification therein [clause 3(g) in Ext.P1 notification in this writ petition] issued by the Commissioner for appointment as non-hereditary trustees in the temples, which are controlled institutions under the Malabar Devaswom Board, is considered in the light of the interpretation given by this Court in **Chathu Achan K. [2022 (6) KLT 388]**, no person actively involved in politics is eligible to be appointed as a non-hereditary trustee in a temple.

59. In **Anantha Narayanan [2023:KER:9966]** the Division Bench noticed that the *Oxford Advanced Learners Dictionary* defines 'politician' as "a person whose job is concerned with politics, especially as an elected member of the Parliament, etc." Such a technical meaning of the word 'politician' cannot be accepted to understand clause 3(7) in Ext.R6(a) notification which says that active politicians or persons holding official posts in any

political party are ineligible. The terms are used disjunctively. So persons who are actively involved in politics, whether or not they hold any post in a political party, are ineligible. On the facts of the case on hand, the Division Bench noticed that respondents 6 to 8 therein have no case that they have any other profession. It is a matter of common knowledge that the functioning of a political party and the selection/election of its office bearers is not similar to public employment. Whichever be the political party, one who is actively involved in the activities of that political party alone is ordinarily selected/elected as an office bearer. Having been selected as office bearers of the political party/Democratic Youth Federation of India (DYFI) before or soon after the appointment as non-hereditary trustees, respondents 6 to 8 cannot contend that they were not active politicians. In the constitution of DYFI [Ext.R6(e)], it is stated that a member of DYFI can work in any political party. That does not mean that DYFI does not have any political colour. Whether or not it has any affiliation to any particular political party, what is evident from the constitution is that the area of activities of DYFI is politics and related activities. As such it cannot be said that the activities of DYFI are non-political.

60. In **Anantha Narayanan [2023:KER:9966]** the



Division Bench noticed that, going by the parameters prescribed in notification [Ext.R6(a)], persons who are convicted for more than six months for offences involving moral turpitude are alone ineligible to be non-hereditary trustees. It is, however, specifically prescribed in Ext.R6(a) that persons who apply to be appointed as non-hereditary trustees shall be idol worshippers and persons having an interest in the advancement of the temple. They should also be persons used to be involved in the affairs of the temple. A person having reverence and adoration for a deity can alone be treated as a worshipper. A person facing criminal prosecution for an offence involving moral turpitude cannot be considered a true worshipper of that standard required for a person to be appointed as a trustee in a temple. A trustee is a person obligated to conduct temple affairs in accordance with custom or usage. In **A.A. Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]** a Three-Judge Bench of the Apex Court explained the diligence and devotion a trustee of a temple should have. When those are the necessary qualifications required for a person to be appointed as a non-hereditary trustee, and the danger of appointing unqualified and untrustworthy persons as trustees, the Malabar Devaswom Board shall stipulate the eligibility criteria in consonance with that. Therefore, the Malabar Devaswom Board

was directed to take a decision in that regard before proceeding with any new appointment of non-hereditary trustees in the temples under it.

61. In **Muraleedharan M. [2023:KER:65964]** - Ext.P7 judgment dated 29.09.2023 in W.P.(C)No. 8226 of 2022 - the Division Bench held that, in view of the law laid down by this Court in **Chathu Achan K. [2022 (6) KLT 388]**, for appointment as non-hereditary trustee in Sree Vairamcode Bhagavathi Temple, Thirunavaya, which is a controlled institution under the Malabar Devaswom Board, the applicant should be a regular worshipper of the temple, who is prepared to actively work for the betterment of the temple. He should be a permanent resident of the Taluk in which the temple is situated, who believes in idolatry. Persons who are busy with their employment, office bearers of political parties, active politicians or those indulging in active participation in the activities of a political party cannot aspire to appointment as non-hereditary trustee of Sree Vairamcode Bhagavathi Temple, Thirunavaya. In view of the law laid down by this Court in **Anantha Narayanan [2023:KER:9966]** persons who apply to be appointed as non-hereditary trustees shall be idol worshippers and persons having an interest in the advancement of the temple. Persons who are actively involved in politics, whether or not they

hold any post in a political party, are ineligible for appointment as non-hereditary trustees of Sree Vairamcode Bhagavathi Temple, Thirunavaya.

62. In paragraph 23 of the judgment in **Muraleedharan M. [2023:KER:65964]**, the Division Bench noticed that, during the course of arguments, the specific stand taken by the learned Standing Counsel for Malabar Devaswom Board was that the appointment of non-hereditary trustees of Sree Vairamcode Bhagavathi Temple, Thirunavaya, shall be made strictly in terms of the disqualification and eligibility clauses provided in Ext.P1 notification dated 19.01.2022 and also the law laid down in the decisions referred to in that judgment. In such circumstances, the Division Bench disposed of W.P.(C)No. 8226 of 2022 by directing the 2<sup>nd</sup> respondent Commissioner and the concerned Area Committee of Malabar Devaswom Board to proceed with the appointment of non-hereditary trustees of Sree Vairamcode Bhagavathi Temple, Thirunavaya, strictly in terms of the disqualification and eligibility clauses provided in Ext.P1 notification dated 19.01.2022 and also the law laid down in **Chathu Achan K. [2022 (6) KLT 388]** and **Anantha Narayanan [2023:KER:9966]**.

63. Whether absence of reason in Ext.P8 order dated 25.10.2023 would vitiate the process undertaken by the 2<sup>nd</sup> respondent Commissioner pursuant to Ext.P1 notification dated 19.01.2022:- Though the specific stand taken in the counter affidavit filed by respondents 1 and 2 is that Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner is one issued after specifically advertng to the observations and directions in Ext.P7 judgment of this Court in **Muraleedharan M. [2023:KER:65964]**, it is an admitted fact that Ext.P8 order does not even refer to Ext.P7 judgment.

64. Relying on the decision of the Apex Court in **National Highways Authority of India v. Madhukar Kumar [(2022) 14 SCC 661]** the learned Senior Counsel for Malabar Devaswom Board contended that the mere absence of reason in Ext.P8 order dated 25.10.2023 would not vitiate the process undertaken by the 2<sup>nd</sup> respondent Commissioner pursuant to Ext.P1 notification dated 19.01.2022, for appointing non-hereditary trustees in the trustee board of Sree Vairamcode Bhagavathi Devaswom and the selection of respondents 5 to 8 as non-hereditary trustees. It would be sufficient that the reasons are found in the files. Further, in the absence of a duty to record reasons, the process of selection undertaken by the 2<sup>nd</sup> respondent Commissioner cannot be

interfered with in the exercise of writ jurisdiction under Article 226 of the Constitution of India, for the mere absence of reason in Ext.P8 order.

65. In **Madhukar Kumar [(2022) 14 SCC 661]** a Two-Judge Bench of the Apex Court was dealing with an appeal arising out of the judgment of a Division Bench of the Patna High Court in L.P.A.No.388 of 2015. The said appeal arises out of the judgment of a learned Single Judge in W.P.No.5643 of 2012. The relief sought in that writ petition was to restrain the construction of a toll plaza at 194km of NH-30 in the four-laning of Patna-Bakhtiyarpur Section, in violation of Rule 8 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008. In the writ petition, it was contended that the National Highways Authority of India (NHAI) had not assigned any reason for establishing the toll plaza within the Municipal area. Further, the establishment of the toll plaza at its present location will cause great difficulties to the residents of the locality because they will have to cross the toll plaza on many occasions in a day, and on all occasions, they will be liable to pay the toll.

66. In **Madhukar Kumar [(2022) 14 SCC 661]**, on the duty to give reasons, the Apex Court noticed that an administrative authority exercising judicial or quasi-judicial power

must record reasons for its decision. This is subject to the exception where the requirement has been expressly or by necessary implication done away with. In **S.N. Mukherjee v. Union of India [(1990) 4 SCC 594]** the Constitution Bench surveyed the entire case law in this regard and held that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons. The Constitution Bench held further that recording of reasons excludes the chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said principle would apply equally to all decisions and its applications cannot be confined to decisions which are subject to appeal, revision or judicial review. It is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons. If the appellate or

revisional authority disagrees, the reasons must be contained in the order under challenge. Thus, it is settled law that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decisions or conclusions. The reasons assure an inbuilt support for the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative, fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the jurisdiction of the High Court under Article 226 or the appellate jurisdiction of the Apex Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person. The applicability of the principles of natural justice is not a rule of thumb or a straitjacket formula as an abstract proposition of law. It depends on the facts of the case, the nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances.

67. In **Madhukar Kumar [(2022) 14 SCC 661]**, the Apex Court noticed that in **Rajeev Suri v. Delhi Development Authority [(2022) 11 SCC 1]**, which arose in the context of the decision taken to construct a new Parliament building and certain other structures, while dealing with the question relating to non-application of mind, the Court has also dealt with the impact of there being no reasons, wherein it was noticed that the rules of natural justice are not embodied rules. They are means to an end and not end in themselves. The goal of these principles is to prevent prejudice. It is from the same source that the requirement of application of mind emerges in decision-making process as it ensures objectivity in decision-making. In order to ascertain that due application of mind has taken place in a decision, the presence of reasons on record plays a crucial role. The presence of reasons would fulfil the twin objectives of revealing an objective application of mind and assisting the adjudicatory body in reviewing the decision.

68. In **Rajeev Suri [(2022) 11 SCC 1]**, the question that arose for consideration before the Apex Court was whether the statement in the recorded minutes of the Central Vista Committee (CVC) meeting “the features of the proposed Parliament building should be in sync with the existing Parliament building” is or is not



indicative of an application of mind. The Apex Court noticed that, in cases when the statute itself provides for an express requirement of a reasoned order, it is understandable that the absence of reasons would be a violation of a legal requirement and thus, illegal. However, in cases when there is no express requirement of reasons, the ulterior effect of the absence of reasons on the final decision cannot be sealed in a straight-jacketed manner. Such cases need to be examined from a broad perspective in the light of overall circumstances. The Court would look at the nature of the decision-making body, the nature of rights involved, stakeholders, the form and substance of the decision, etc. The list is not exhaustive for the simple reason that drawing a conclusion of non-application of mind from mere absence of reasons is a matter of pure inference and the same cannot be drawn until and unless other circumstances too point in the same direction. Thereafter, the Apex Court, relying on the decision in **Union of India v. E.G. Nambudiri [(1991) 3 SCC 38]**, held that had it been a case of any other administrative committee required to adjudicate upon the rights of individuals, merely because it is not mandatory to record reasons would not absolve it of the requirement of objective consideration of the proposal. The ultimate enquiry is of application of mind and a

reasoned order is merely one element in that enquiry. In a given case, the Court can still advert to other elements of the decision-making process to weigh the factum of application of mind. The test to be applied in such a case would be of a reasonable link between the material placed before the decision-making body and the conclusion reached in consideration thereof. The Court may decide in the context of the overall circumstances of the case, and a sole element (of no reasons or lack of elaborate reasons) cannot be enough to make or break the decision as long as the judicial mind is convinced of substantial application of mind from other circumstances. Even in common law jurisprudence, there is no absolute requirement of reasoned order in all decisions.

69. In **Rajeev Suri [(2022) 11 SCC 1]**, the Apex Court noticed the decision of the House of Lords in **R. v. Secretary of State for Trade and Industry [(1989) 2 All ER 609]**, wherein it was contended that the decision is not based on convincing reasons and therefore, must be declared as illegal. The House of Lords refused to entertain this contention and noted that the mere absence of reasons would not render the decision irrational. Lord Keith, in his opinion, noted that the only significance of the absence of reasons would be that if circumstances overwhelmingly point towards a different conclusion than the one reached by the

body, it would be fatal. The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker who has given no reasons cannot complain if the court draws the inference that he had no rational reason for his decision.

70. In **Rajeev Suri [(2022) 11 SCC 1]**, the Apex Court noticed the decisions in **Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi [(1991) 2 SCC 716]** and **Mahabir Jute Mills Ltd. v. Shibban Lal Saxena [(1975) 2 SCC 818]**, wherein it was held that if the function/decision of the Government is administrative, in law, ordinarily there is no requirement to be accompanied by a statement of reasons, unless there is an express statutory requirement in that regard. Again, in **Sarat Kumar Dash v. Biswajit Patnaik [(1995) Supp.1 SCC 434]**, it was observed that, in the field of administrative action, reasons are the link between the maker of the order or the author of the decision and the order itself. The record can be called to consider whether the author had given due consideration to the facts placed

before him before he arrived at the decision. Therefore, the requirement of reasons in cases which do not demand it in an express manner is based on desirability, and the same is advised to the extent possible without impinging upon the character of the decision-making body and the needs of administrative efficiency.

71. In **Madhukar Kumar [(2022) 14 SCC 661]**, the Apex Court held that as noticed by the Three-Judge Bench in **Mahabir Jute Mills Ltd. [(1975) 2 SCC 818]**, there is no general duty, when an administrative decision is taken, to give reasons. A statute may, however, explicitly provide that the executive authority must provide reasons and it must be recorded in writing. A case in point is the first proviso to Rule 8 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 itself. The desirability of a general duty, in the case of administrative action, to support decisions with reason, is open to question. One of the most important reasons is the burden it would put on the administration. Administrative decisions are made in a wide spectrum of situations and contexts. The executive power of the Union and States are provided in Articles 73 and 162 of the Constitution of India, respectively. Undoubtedly, in India, every State action must be fair, failing which, it will fall foul of the mandate of Article 14. The duty to give reasons would arise even

in the case of administrative action, where legal rights are at stake and the administrative action adversely affects legal rights. There may be something in the nature or the context under which the administrative action is taken, which may necessitate the authority being forthcoming with rational reasons. There are other decisions, which essentially belong more to the realm of executive policy-making, which ordinarily may not require the furnishing of reasons.

72. In **Madhukar Kumar [(2022) 14 SCC 661]**, the Apex Court noticed the advantages, undoubtedly, of introducing a reasons-driven regime. Persons, who may have a right or an interest, would know, what are the reasons which impelled the administrator to take a particular decision. Judicial review in India, which encompasses the wide contours of public interest litigation as well, would receive immeasurable assistance if the reasons for particular decisions were articulated to the extent possible. The giving of reasons also has a disciplining effect on the administrator. This is for the reason that the reasons would capture the thought process, which culminated in the decision, and it would help the administrator steer clear of the vices of illegality, irrationality and also disproportionality. Reasons could help to establish the application of mind. Conversely, the absence

of reasons may unerringly point to non-application of mind. The duty to act fairly may require reasons to be recorded but the said duty, though there is a general duty on all State players to act fairly, may have its underpinnings, ultimately in legal rights.

73. In **Madhukar Kumar [(2022) 14 SCC 661]**, the Apex Court noticed that it is one thing to say that there should be reasons, which persuaded the administrator to take a particular decision and a different thing to find that the reasons must be incorporated in a decision. The question relating to the duty to communicate such a decision would arise for consideration in different situations, having regard to the impact, which it, in law, produces. On the facts of the case on hand, the Apex Court noticed that the second proviso to Rule 17 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 provides not only for there being reasons but also the reasons for refusal to permit barricades must be communicated. If the law provides for a duty to record reasons in writing, undoubtedly, it must be followed, and it would amount to a violation of the statute, if it were not followed. Even if there is no duty to record reasons or support the order with reasons, there cannot be any doubt that, for every decision, there would be and there must be, a reason. The Constitution does not contemplate any public authority,

exercising power with caprice or without any rationale. But here again, in the absence of the duty to record reasons, the Court is not to be clothed with the power to strike down administrative action for the mere reason that no reasons are to be found recorded. In certain situations, the reason for a particular decision may be gleaned from the pleadings of the authority, when the matter is tested in a court. From the materials, including the file notings, which are made available, the Court may conclude that there were reasons and the action was not illegal or arbitrary. From admitted facts, the Court may conclude that there was sufficient justification, and the mere absence of reasons, would not be sufficient to invalidate the action of the public authority. Thus, reasons may, in certain situations, have to be recorded in the order. In other contexts, it would suffice that the reasons are to be found in the files. The Court may, when there is no duty to record reasons, support an administrative decision, with reference to the pleadings aided by materials.

74. In **Breen v. Amalgamated Engineering Union [(1971) 1 All ER 1148]** Lord Denning, M.R. observed that the giving of reasons is one of the fundamentals of good administration. In **Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120]** it was observed that failure to give

reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.

75. In **Commissioner of Police, Bombay v. Gordhandas Bhanji [AIR 1952 SC 16]** the Apex Court held that public orders publicly made, in the exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

76. Following the principle laid down in **Gordhandas Bhanji [AIR 1952 SC 16]** the Apex Court has reiterated in **Mohinder Singh Gill v. Chief Election Commissioner [(1978) 1 SCC 405]** that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on



account of a challenge, get validated by additional grounds later brought out.

77. Following the principle laid down in the decisions referred to supra, the Apex Court in **Chairman and Managing Director, United Commercial Bank v. P. C. Kakkar [(2003) 4 SCC 364]** held that reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance.

78. We have perused the files handed over by the learned Senior Counsel for Malabar Devaswom Board relating to Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner.

79. The report dated 23.08.2023 of the Inspector, Malabar Devaswom Board, Manjeri Division, submitted before the Assistant

Commissioner is available on pages 176 to 179 of the files, which would show that the Inspector conducted an inquiry, in which 9 out of 23 applicants did not attend. In the said report, the Inspector has reported that 11 applicants do not have any disqualifications for being appointed as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom. None of them are involved in any criminal cases or any litigations filed against the Devaswom or hold any position in a political party.

80. The applications submitted pursuant to Ext.P1 notification dated 19.01.2022, along with supporting documents, are available in the files on pages 180 to 289. The interim order of this Court dated 15.09.2023 in I.A.No.1 of 2023 in W.P.(C)No.8226 of 2022, whereby the order of stay granted in that writ petition was extended by one month, is available in the files on page 290.

81. A letter dated 28.04.2023 of the 2<sup>nd</sup> respondent Commissioner, addressed to the Assistant Commissioner, Malappuram, is available on page 291 of the files, whereby the Assistant Commissioner was directed to submit a detailed report on the applications received for appointment as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom. By that letter of the 2<sup>nd</sup> respondent Commissioner, the Assistant Commissioner

was directed to submit the report only after verifying the decisions of this Court on the appointment of non-hereditary trustees in temples.

82. The report dated 11.09.2023 submitted by the Assistant Commissioner to the 2<sup>nd</sup> respondent Commissioner is available on page 292 of the files, whereby the Assistant Commissioner forwarded the report dated 23.08.2023 of the Inspector, Manjeri Division, to the Commissioner. The 3<sup>rd</sup> paragraph of that report is nothing but a verbatim reproduction of the conclusion of the Inspector, Manjeri Division, in his report dated 23.08.2023.

83. An e-mail dated 29.09.2022 of the learned Standing Counsel for Malabar Devaswom Board is available on page 293 of the files, whereby the Board was informed about the disposal of W.P.(C)No.8226 of 2022 by Ext.P7 judgment dated 29.09.2023 - **Muraleedharan M. [2023:KER:65964]**, whereby that writ petition was disposed of with a direction to proceed with the appointment of non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, strictly in terms of the disqualification and eligibility clauses provided in Ext.P1 notification dated 19.01.2022, and also the law laid down in **Chathu Achan K. [2022 (6) KLT 388]** and **Anantha Narayanan [2023:KER:9966]**.

84. In the 'agenda note' dated nil, which is available on page 295 of the files, it is stated that pursuant to the direction issued to conduct an inquiry and submit a report on the applications received for appointment as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, the Assistant Commissioner has submitted an inquiry report. In the inquiry conducted on 22 applications, no disqualifications were found in the case of 14 applicants. The details of those 14 applicants are submitted to the Assistant Commissioner for further action. In the 'agenda note', it is stated that, in the above matter, the High Court has issued a judgment dated 29.09.2023 in W.P.(C)No.8226 of 2022. As per that judgment appointments will have to be made strictly in terms of the directions contained therein. A copy of that judgment and the letter of the Standing Counsel are enclosed along with the 'agenda note'.

85. In that 'agenda note', it is stated that the names recommended by the Assistant Commissioner are enclosed therewith for the consideration of the Board, through the Establishment Standing Committee. The 'agenda note' available on page 295 of the files contains an endorsement regarding the decision taken by the Establishment Standing Committee to make a recommendation to the Board. The office seal of the Chairman

of the Establishment Standing Committee is affixed below that endorsement, without signature.

86. A copy of decision No.7 of the Board, which was taken on 17.10.2023, is pasted on the back side of page 295 of the files, wherein it is stated that, after a detailed discussion on the decision in W.P.(C)No.8226 of 2022, the Board decided to appoint respondents 5 to 8 herein as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, for a period of two years, based on the report received after the inquiry conducted on the applications received for appointment.

87. A copy of Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent, based on decision No.7 taken by the Board on 17.10.2023, whereby respondents 5 to 8 herein are appointed as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, for a period of two years, is available on page 298 of the files.

88. Ext.P8 order dated 25.10.2023 does not even refer to Ext.P7 judgment of this Court in W.P.(C)No.8226 of 2022. In paragraph 1 of that order, it is stated that pursuant to the direction issued to conduct an inquiry and submit a report on the applications received for appointment as non-hereditary trustees

of Sree Vairamcode Bhagavathi Devaswom, the Assistant Commissioner has submitted an inquiry report.

89. In paragraph 2 of Ext.P8 order dated 25.10.2023, it is stated that the Board in its meeting held on 17.10.2023, vide decision No.7, decided to appoint respondents 5 to 8 herein as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, for a period of two years, based on the report received after the inquiry conducted on the applications received for appointment.

90. As evident from the files relating to Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner, the said order is one issued even without adverting to the direction contained in Ext.P7 judgment in **Muraleedharan M. [2023:KER:65964]**, whereby W.P.(C)No.8226 of 2022 was disposed of with a direction to proceed with the appointment of non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, strictly in terms of the disqualification and eligibility clauses provided in Ext.P1 notification dated 19.01.2022, and also the law laid down in **Chathu Achan K. [2022 (6) KLT 388]** and **Anantha Narayanan [2023:KER:9966]**.

91. In the instant case, as already noticed hereinbefore, in paragraph 23 of Ext.P7 judgment in **Muraleedharan M.**

**[2023:KER:65964]** the Division Bench noticed the specific stand taken by the learned Standing Counsel for Malabar Devaswom Board that the appointment of non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom shall be made strictly in terms of the disqualification and eligibility clauses provided in Ext.P1 notification dated 19.01.2022 and also the law laid down in **Chathu Achan K. [2022 (6) KLT 388]** and **Anantha Narayanan [2023:KER:9966]**. Though the specific stand taken in the counter affidavit filed by respondents 1 and 2 is that Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner is one issued after specifically advertent to the observations and directions in Ext.P7 judgment of this Court dated 29.09.2023 in W.P.(C)No.8226 of 2022, it is an admitted fact that Ext.P8 order does not even refer to Ext.P7 judgment in W.P.(C)No.8226 of 2022.

92. Section 99 of the Madras Hindu Religious and Charitable Endowments Act deals with the power of the State Government to call for records and pass orders. As per sub-section (1) of Section 99, the State Government may call for and examine the record of the Board or Commissioner or any Deputy or Assistant Commissioner, or any Area Committee or of any trustee in respect of any proceeding, not being a proceeding in respect of

which a suit or an appeal to a court is provided by the Act, to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein; and, if, in any case, it appears to the State Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly. As per the proviso to sub-section (1) of Section 99, the State Government shall not pass any order prejudicial to any party unless he has had a reasonable opportunity to make his representations. As per sub-section (2) of Section 99, the State Government may stay the execution of any such decision or order, pending the exercise of their powers under sub-section (1) in respect thereof.

93. In view of the provisions under sub-section (1) of Section 39 of the Act, the State Government can call for and examine the records in respect of any proceedings of the 2<sup>nd</sup> respondent Commissioner constituting the Board of Trustees of a religious institution, by appointing non-hereditary trustees under sub-section (1) of Section 39 of the Act, in exercise of its revisional power under sub-section (1) of Section 99 of the Act. In the order passed in such a revision, the Government has to record its satisfaction as to the regularity of the proceeding or the



correctness, legality or propriety of the decision or order passed by the Commissioner, Malabar Devaswom Board.

94. The giving of reasons in support of the conclusions by the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, when exercising the initial jurisdiction under sub-section (1) of Section 39 of the Act, in the matter of appointment of non-hereditary trustees under sub-section (1) of Section 39 of the Act, which is quasi-judicial in nature, is essential for the reason that it is calculated to prevent unconscious unfairness or arbitrariness in reaching conclusions. The very search for reasons in such an order will put that quasi-judicial authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfitness in the conclusion. A cryptic order like Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner, by its silence, renders it virtually impossible for the State Government to exercise its revisional power under sub-section (1) of Section 99 of the Act, in adjudging the validity of that order. Such an order will make the revisional jurisdiction of the State Government negatory and ineffective, which will also make negatory and ineffective the exercise of the power of judicial review by the High Court under Article 226 of the Constitution of India, in appropriate cases, in adjudging the validity of that order.

95. Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner is one issued pursuant to the direction contained in Ext.P7 judgment of this Court in **Muraleedharan M. [2023:KER:65964]**, whereby the 2<sup>nd</sup> respondent Commissioner was directed to proceed with the appointment of non-hereditary trustees of Sree Vairamcode Bhagavathi Temple, Thirunavaya, strictly in terms of the disqualification and eligibility clauses provided in Ext.P1 notification dated 19.01.2022 and also the law laid down in **Chathu Achan K. [2022 (6) KLT 388]** and **Anantha Narayanan [2023:KER:9966]**. In paragraph 23 of that judgment, the Division Bench noticed the specific stand taken by the learned Standing Counsel for Malabar Devaswom Board that the appointment of non-hereditary trustees of Sree Vairamcode Bhagavathi Temple, Thirunavaya, shall be made strictly in terms of the disqualification and eligibility clauses provided in Ext.P1 notification dated 19.01.2022 and also the law laid down in the decisions referred to supra.

96. Ext.P1 notification dated 19.01.2022 issued by the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, is one issued in terms of guidelines dated 18.05.2004 issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department. The said guidelines

were issued pursuant to the directions contained in the judgment of a Division Bench of this Court in **K.P. Vasudevan Namboothiri and others v. K.C. Vasudevan Namboothiri and others** - judgment dated 01.04.2004 in O.P.No.6131 of 2003.

97. In **K.P. Vasudevan Namboothiri** (supra) the challenge made before a Division Bench of this Court by the writ petitioners, who were the members of Kadambuzha Sree Bhagavathi Kshethra Kshema Samithi, was against an order dated 01.02.2003 issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department, whereby respondents 8 to 11 therein were appointed as non-hereditary trustees of that temple. In the judgment dated 01.04.2004, the Division Bench noticed that, on a query made as to whether rules have been framed or guidelines have been laid down with regard to qualifications of the persons to be considered for appointment as non-hereditary trustees for the temples coming within the jurisdiction of the Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, the learned counsel could not make available any guidelines with regard to appointment of non-hereditary trustees. The Division Bench noticed that the Madras Hindu Religious and Charitable Endowments Act, 1951, is enacted to provide for the

better administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras.

The said Act has been made applicable to temples coming under the jurisdiction of the Commissioner. The Commissioner, by notification, invited applications for appointment as non-hereditary trustees.

98. In **K.P. Vasudevan Namboothiri** (supra) the Division Bench noticed that, for appointment as non-hereditary trustees, the applicants have to submit applications in the prescribed format. Clause 8 of the form deals with educational qualifications, mother tongue and other languages known. The details of properties, etc., have also to be submitted along with the application, so also the liabilities. Column No.13 also stipulates whether the applicant or any member of his family made any endowment, the details of service rendered in various temples, etc. Column No.20 refers to details of any of the disqualifications provided under Section 46(1) of the Act.

99. In **K.P. Vasudevan Namboothiri** (supra), the Division Bench noticed that no rules have been framed by the authority regarding the appointment of a non-hereditary trustee. No guidelines have been laid down by the Department with regard to the manner in which non-hereditary trustees are to be appointed

in various temples coming within the jurisdiction of the Commissioner. The absence of any guidelines or rules would lead to arbitrariness in the matter of selection and appointment of non-hereditary trustees. No qualification for non-hereditary trustees has also been prescribed. In paragraph 3 of the decision, the Division Bench referred to the educational qualifications of the applicants. The Division Bench noticed that if educational qualification is the criteria, then respondents 8 to 11, who are only having SSLC, cannot be preferred. Graduates have also applied for considering them to the post of non-hereditary trustees. In column No.13 of the application, the details of services rendered in various temples, as well as endowments, have been called for. If this is the criteria, the respective column in the application submitted by the 8<sup>th</sup> respondent is blank. 9<sup>th</sup> and 10<sup>th</sup> respondents stated that they had helped in the renovation of certain temples. However, no details have been furnished. The 11<sup>th</sup> respondent has kept column No.13 blank. There are some other applicants who have served in various temples.

100. In **K.P. Vasudevan Namboothiri** (supra), the Division Bench failed to see how the Commissioner had assessed the comparative merits and demerits of the applicants while dealing with the application submitted by them. The Division Bench

noticed that no reasons have been stated by the Commissioner, in the order dated 01.02.2003, as to why he preferred respondents 8 to 11 therein. Section 39 of the Act states that in the case of any such institution having a hereditary trustee or trustees, the Commissioner after notice to such trustee or trustees, and after such enquiry as he deems adequate, considers for reasons to be recorded that the affairs of the institution are not properly managed, then the non-hereditary trustee can be appointed.

101. In **K.P. Vasudevan Namboothiri** (supra), after referring to the decision in **Raman Namboothiri v. Chief Commissioner, Hindu Religious and Charitable Endowments [2004 (1) KLT 945]**, the Division Bench held that the Commissioner cannot solely depend upon the consent or no-objection certificate for appointment of a non-hereditary trustee. The Commissioner has to apply his mind and follow objective criteria. The Commissioner cannot act arbitrarily and cannot pick and choose persons from various applications. If applications are invited from the public, the Commissioner has a duty to act fairly and must be demonstrable from the records. The Division Bench noticed that such a consideration is absent and the records would not reveal the same. The report does not speak of the qualification or disqualification.

102. In **K.P. Vasudevan Namboothiri** (supra), before the Division Bench, the learned Government Pleader submitted that respondents 8 to 10 therein are not disqualified, the question is whether they are qualified. Respondents 8 to 11, it was alleged, belong to a particular political party. The Division Bench noticed that the said fact was not disputed by the respondents. The Division Bench observed that the mere fact that one belongs to a particular political party that by itself be a disqualification, but the files would not show on what basis they were selected. Further the record would also show that some other applicants were better qualified going by the details called for.

103. In **K.P. Vasudevan Namboothiri** (supra), the Division Bench noticed the decision of the Apex Court in **Kumari Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212]**, wherein it was held that every State action must be informed of reasons, and it follows that act uninformed by reason is arbitrary. The Division Bench noticed that the Commissioner has not made any comparative evaluation based on the details furnished by the applicants, and he has not recorded reasons and no reasons are discernible from the records also. In such circumstances, the Division Bench set aside the order dated 01.02.2003 of appointment of respondents 8 to 11 therein as non-hereditary

trustees of Kadambuzha Bhagavathi Temple and ordered fresh selection after laying down appropriate guidelines. The exercise in that regard was directed to be completed within a period of three months from the date of that judgment. Till that time, respondents 8 to 11 can continue in that office, since their continuance has not been questioned by any of the applicants. The Division Bench ordered that all the applications, including the application submitted by respondents 8 to 11, or any fresh applications may also be considered. The Division Bench made it clear that the judgment would not affect the dispute, if any, pending between respondents 1 and 2 and the 7<sup>th</sup> respondent therein.

104. It is after the decision of the Division Bench in **K.P. Vasudevan Namboothiri** (supra) that the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department issued guidelines dated 18.05.2004 for the selection of non-hereditary trustees in the Malabar area under the control of that Department. In those guidelines, the observations made by the Division Bench in **K.P. Vasudevan Namboothiri** (supra) were referred to. While setting aside the order of appointment, the Division Bench directed to make a fresh selection after laying down appropriate guidelines. Accordingly, the guidelines dated 18.05.2004 were laid down by the



Commissioner for the selection of non-hereditary trustees in the temples under that Department.

105. Clause (a) of the aforesaid guidelines dated 18.05.2004 provides that an appointee shall be ordinarily a resident in the Taluk in which the temple is situated, and for this purpose, either his name in the electoral roll or address furnished in the ration card shall be the proof. As per clause (b), the appointee shall be a person who is in the habit of visiting the temple usually. As per clause (c), the appointee shall be a person believing in idol worship, and persons who are actively working for the welfare of the temple/temples, may be given preference.

106. As per clause (d) of the guidelines dated 18.05.2004, the following category of persons need not be considered for appointment ordinarily (i) busy professionals; (ii) active politicians and office bearers of political parties; (iii) persons who had encroached Devaswom lands or against whom Devaswom has filed cases in a court of law; and (iv) persons who had filed litigations against the Devaswom.

107. As per clause (e) of the guidelines dated 18.05.2004, when the comparative merits and demerits are difficult to decide as above, the educational qualification shall be taken as a determinant factor. As per clause (f), while making an

appointment, as far as possible, persons who can work as a team for the welfare and development activities of the temple shall be appointed. As per clause (g), in the case of denominational temples, the appointment shall be limited to persons belonging to the denomination, as far as possible. As per clause (h), in the case of other temples, all sections of Hindus be given representation, to the extent possible, under the guidelines. As per clause (i), in case appointments are made, not in accordance with these guidelines, the reason therefor shall be recorded. The report of the officer conducting an enquiry as to the suitability of the applicants shall contain specific remarks with regard to the above points.

108. As already noticed hereinbefore, Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner appointing respondents 5 to 8 as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom is one issued without advertng to the direction contained in Ext.P7 judgment in **Muraleedharan M. [2023:KER:65964]**, the disqualification and eligibility clauses provided in Ext.P1 notification dated 19.01.2022 and the law laid down in **Chathu Achan K. [2022 (6) KLT 388]** and **Anantha Narayanan [2023:KER:9966]**. As per the report dated 23.08.2023 of the Inspector, Malabar Devaswom Board, Manjeri

Division, which is available on pages 176 to 179 of the files, out of 23 applicants, 11 do not have any disqualification for being appointed as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom. In the report, it is stated that none of them are involved in any criminal cases, any litigations against the Devaswom or hold any position in a political party. The report dated 11.09.2023 submitted by the Assistant Commissioner to the 2<sup>nd</sup> respondent Commissioner, which is available on page 292 of the files, is nothing but a verbatim reproduction of the conclusion of the Inspector, Manjeri Division, in his report dated 23.08.2023.

109. As already noticed hereinbefore, in the 'agenda note', which is available on page 295 of the files, it is stated that the names recommended by the Assistant Commissioner are enclosed therewith for the consideration of the Board, through the Establishment Standing Committee. In decision No.7 taken by the Board on 17.10.2023, which is pasted on the back side of page 295 of the files, it is stated that, after a detailed discussion on the decision in W.P.(C)No.8226 of 2022, the Board decided to appoint respondents 5 to 8 herein as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, for a period of two years, based on the report received after the inquiry conducted on the applications received for appointment.

110. The files relating to Ext.P8 order, handed over by the learned Senior Counsel for Malabar Devaswom Board, do not disclose an assessment of the comparative merits and demerits of the applicants, either by the 2<sup>nd</sup> respondent Commissioner, the 1<sup>st</sup> respondent Malabar Devaswom Board or the Establishment Standing Committee, while dealing with the applications made pursuant to Ext.P1 notification for appointment as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom. Even the report dated 23.08.2023 of the Inspector, Manjeri Division, does not disclose an assessment of the comparative merits and demerits of the applicants. Such a report was acted upon in the process of selection pursuant to Ext.P1 notification, for appointing respondents 5 to 8 as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom.

113. Maintainability of a writ petition under Article 226 of the Constitution of India challenging Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner:- Relying on the judgment of the Division Bench of this Court in **Satheesh Kumar E. v. Malabar Devaswom Board and others [2011 (4) KHC 696]**, the learned Senior Counsel for Malabar Devaswom Board contended that in case the petitioner has a case that respondents

5 to 8, who have been appointed as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom are active politicians or office bearers of political parties, he can bring it to the notice of the 2<sup>nd</sup> respondent Commissioner, in which event the Commissioner can take a decision on that matter, in accordance with law.

114. In **Satheesh Kumar E. [2011 (4) KHC 696]** a Division Bench of this Court was dealing with the challenge made against the appointment of non-hereditary trustees in Sree Vairamcode Bhagavathi Devaswom. The hereditary trustee of the Devaswom, Ambika Pulliyathiri Amma, died on 18.12.2008. Ambika Devi Valiyakatottu Kovilakam staked claim to that post on the plea of succession, which was rejected by the Commissioner. By the judgment dated 23.02.2011 in W.P.(C)No.5766 of 2011 Ambika Devi was given a further opportunity to provide materials before the statutory authority within a period of four months. The Malabar Devaswom Board issued a notification inviting applications for appointment as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, conducted selection and appointed the party respondents in W.P.(C)No.10112 of 2011. The challenge made in W.P.(C)No.10112 of 2011 and the connected matter, i.e., W.P.(C)No.8991 of 2011 was against the said

notification. The grounds raised in the writ petitions include a plea that the private respondents are political activists and are, therefore, disentitled to be appointed; that the jurisdiction to appoint the non-hereditary trustee is only with the Commissioner; and that undue haste has been taken in making the selection.

115. In **Satheesh Kumar E. [2011 (4) KHC 696]** the Division Bench noticed that, in those writ petitions, the Court was dealing with the interests of a temple and devotees. The authorities of the Malabar Devaswom Board, including the Commissioner have, essentially, the duty and obligation to act in trust. This obligation would assume more relevance when the hereditary trustee or the Board of Trustees, including the non-hereditary trustees, do not act in terms of the requirements of the Act and the other laws that apply to such institution. Therefore, the Court needs to look into the entire materials available to consider whether it would exercise the discretionary jurisdiction under Article 226 of the Constitution of India to grant the relief sought for.

116. In **Satheesh Kumar E. [2011 (4) KHC 696]** the Division Bench noticed that the decisions cited by the petitioner, i.e., **Kunhirama Variar v. State of Kerala [2011 (2) KHC 761]**, **Parameswaran Namboothiri v. Malabar Devaswom**

**Board [2011 (2) KHC 719], Raman Namboothiri v. Chief Commissioner, Hindu Religious and Charitable Endowments (Administration) Department [2004 (1) KLT 945]** and **Muttill Sree Vishnu Kshetra Samithi v. Assistant Commissioner, Hindu Religious and Charitable Endowments (Administration) Department [2010 (4) KHC 559]** touching on the quality of exercise of the authority under sub-section (2) and sub-section (5) of Section 39 of the Act were rendered focusing on different aspects of law, including the right of the hereditary trustee to be heard and the requirement to reduce to writing, the reasons for making appointment of a non-hereditary trustee.

117. In **Satheesh Kumar E. [2011 (4) KHC 696]**, on the facts of the case on hand, the Division Bench noticed that nobody projects himself as a hereditary trustee to challenge the impugned notification inviting applications for appointment to the vacancies of non-hereditary trustees. The petitioner in W.P.(C)No.10112 of 2011 is the solitary holder of the authority in relation to the management of the temple. He is the only surviving non-hereditary trustee, who was appointed by the Malabar Devaswom Board. His challenge to the proposal to appoint other non-hereditary trustees is not founded on any legal right. He cannot

assume the right of a hereditary trustee and insist that he ought to have been heard before any proposal to appoint other non-hereditary trustees. The petitioner in the other writ petition, i.e., W.P.(C)No.8991 of 2011, was himself an applicant, who lost his claim for re-appointment to the post, which fell vacant by reason of efflux of time. He also does not have any legal right to challenge the notification. This being the situation, the Division Bench found formidable substance in the submissions by the learned Senior Counsel for the respondents that the need to appoint non-hereditary trustees for the temple is not germane for consideration in those writ petitions. Except when the issue is of appointing a non-hereditary trustee on the face of an available hereditary trustee, there is no need to hear on the issue as to the requirement of a non-hereditary trustee. The precedents referred to supra do not apply in cases where there is no hereditary trustee, and the contest is as to appointment as against vacancies of non-hereditary trustees, that arise by efflux of time or otherwise.

118. In **Satheesh Kumar E. [2011 (4) KHC 696]** the Division Bench noticed that what survived for consideration was the plea that the selected persons are ineligible to be appointed as non-hereditary trustees as they either do not possess the qualification prescribed or are disqualified in terms of the



notification and other relevant laws. The pointed allegation was that they are members of political parties or active workers. They are also persons, who do not have faith in temple worship. The private respondents have filed a counter affidavit denying the allegations against them. The Division Bench noticed that, obviously, the private respondents can officiate only in terms of the requirement that they have faith in temple worship. This, again, is a matter within the purview of the Commissioner or the Malabar Devaswom Board, in the event being shown that the persons selected and appointed do not conform to the standards in terms of the notification. If petitioners have any specific complaint about any private respondent in that regard, that can be brought to the notice of the Commissioner. In such event, he shall hear the complainants and the person whose appointment is criticised and decide on such matter, in accordance with law.

119. Relying on the decision of a Division Bench of this Court in **Zamorin Raja of Calicut v. State of Kerala and others [2022 (4) KHC 7]** in which one among us [Anil K. Narendran, J.] was a party, the learned Senior Counsel for Malabar Devaswom Board would submit that if the petitioner is feeling aggrieved by Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner, he can invoke the statutory remedy available

under Section 99 of the Madras Hindu Religious and Charitable Endowments Act, instead of invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

120. in **Zamorin Raja of Calicut [2022 (4) KHC 7]** the Division Bench was dealing with W.P.(C)No.23304 of 2021 filed by the hereditary trustee of 32 temples, which are controlled institutions under the Malabar Devaswom Board, having Central Devaswom Office near Valayanadu Temple. The challenge in that writ petition was against Ext.P5 show-cause notice dated 01.11.2021 issued by the Deputy Commissioner, invoking the provisions under Section 45 of the Madras Hindu Religious and Charitable Endowments Act, pointing out a number of discrepancies, infractions and irregularities in the administration of the said temples. W.P.(C)No.27286 of 2021 filed by the petitioner in W.P.(C)No.23304 of 2021 was regarding the gold plating of the flag mast in Valayanadu Bhagavathi Temple. There arose allegations of irregularities and misfeasance and an enquiry in that regard under Section 45 of the Act was going on. In that enquiry proceedings, the Commissioner, Malabar Devaswom Board, the petitioner filed I.A.Nos.27 and 28 of 2021, which ended in dismissal by Ext.P21 order. The challenge in that writ petition was against Ext.P21 order. In W.P.(C)No.27288 of 2021, the

petitioners, who are the trustees of Sree Kadaparambath Kavu Bhagavathi Temple, challenged Ext.P6 order issued by the Commissioner, Malabar Devaswom Board, whereby an Executive Officer has been appointed in the said temple.

121. in **Zamorin Raja of Calicut [2022 (4) KHC 7]**, after referring to the provisions under Section 99 of the Act and the law laid down in the decisions referred to therein on the maintainability of a writ petition when an effective and efficacious alternative remedy is available, the Division Bench found that there is nothing even to prima facie show that there has been violation of the principles of natural justice or lack of jurisdiction in issuing Ext.P21 order in W.P.(C)No.27286 of 2021 and Ext.P6 order in W.P.(C)No.27288 of 2021. Ext.P21 order in W.P.(C) No. 27286 of 2021 was passed by the Commissioner after hearing the parties in detail. Ext.P6 order in W.P.(C)No.27288 of 2021 was issued by the Deputy Commissioner, invoking the provisions in Ext.P1 scheme, as per which only the administration of the temple in question is being carried out. The correctness or not of those orders is a matter to be looked into by the Government in the exercise of the powers invested in it under Section 99 of the Act after analysing and appreciating the materials on record, including disputed questions of fact. It may be uncharitable to say that such

a statutory remedy is not effective. Suffice it to say that the apprehension of the petitioners, that the revisional authority may not act fairly and judicially, is no reason to entertain a writ petition. A plea based on violation of any fundamental right of the respective petitioners is rather not available in those cases. They do not call in question the vires of any statutory provision. In the said circumstances, the Division Bench held that petitioners should not have rushed to this Court at that stage.

122. As already noticed hereinbefore, a cryptic order like Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner, by its silence, renders it virtually impossible for the State Government to exercise its revisional power under sub-section (1) of Section 99 of the Act, in adjudging the validity of that order. Such an order will make the revisional jurisdiction of the State Government negatory and ineffective. The giving of reasons in support of the conclusions by the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, when exercising the initial jurisdiction under sub-section (1) of Section 39 of the Act, in the matter of appointment of non-hereditary trustees under sub-section (1) of Section 39 of the Act, which is quasi-judicial in nature, is essential for the reason that it is calculated to prevent unconscious unfairness or arbitrariness in reaching conclusions. In

the absence any reasons in support of the decision taken in Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner, which is one issued in flagrant violation of the direction contained in Ext.P7 judgment of this Court in W.P.(C)No.8226 of 2022, the petitioner can invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to challenge that order. The contentions to the contra are liable to be repelled as untenable and we do so.

123. Whether the eligibility criteria prescribed in Ext.P1 notification dated 19.01.2022 issued by the 2<sup>nd</sup> respondent Commissioner inviting applications for appointment as non-hereditary trustees of Sree Vairamcode Bhagavathi Temple are at variance with the provisions under the Act of 1951:- Relying on the judgment of the Apex Court in **Ashish Kumar v. State of Uttar Pradesh [(2018) 3 SCC 55]**, the learned Senior Counsel for Malabar Devaswom Board would contend that when the eligibility criteria prescribed in Ext.P1 notification dated 19.01.2022 issued by the 2<sup>nd</sup> respondent Commissioner inviting applications for appointment as non-hereditary trustees of Sree Vairamcode Bhagavathi Temple are in variance with the provisions under Section 46 the Act, that guidelines would not take

precedence over the statutory provisions. Paragraphs 26 and 27 of that decision read thus;

'26. In the counter affidavit filed in this court by the state, 1991 rules have been accepted to be the relevant rules regulating recruitment, as has been noted in Paragraph xiii extracted above. The qualification prescribed in the Rules does not provide for L.T./B.T. B.Ed. as an essential qualification. Thus, non-possession of L.T./B.T. B.Ed. does not make him disqualified for the post as per the statutory rules of 1991. The appellant is a postgraduate in psychology and thus also fulfills the qualification prescribed in the 1991 rules. The respondents in the counter affidavit had themselves come up with the case that the appointment has to be made in accordance with the statutory rules. When under the statutory rules, 1991, the appellant fulfills the qualification; there is no occasion to deny appointment to him.

27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking at the qualification prescribed in the statutory rules, the appellant fulfills the qualification, and after being selected for the post, denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is statutory rules which take precedence. In this context, reference is made in the judgment of this Court in the case of Malik Mazhar Sultan v. U.P. Public Service Commission [(2006) 9 SCC 507]. Paragraph 21 of the judgment lays down the above proposition which is to the following effect;

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 01.07.2001 and 01.07.2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisements but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

124. In the instant case, as already noticed hereinbefore, in view of the provisions contained in Chapter II of the Act of 1951, as amended by the Amendment Act of 2008, the Malabar Devaswom Board and the authorities of the Board, including the Commissioner, have the duty and obligation to act in trust. In view of the provisions contained in Section 24 of the Act, 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.

125. Ext.P1 notification dated 19.01.2022 issued by the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, is one issued in terms of guidelines dated 18.05.2004 issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department. The said guidelines were issued pursuant to the directions contained in the judgment of a Division Bench of this Court in **K.P. Vasudevan Namboothiri** (supra) when it was noticed that the absence of guidelines or rules would lead to arbitrariness in the matter of selection and appointment of non-hereditary trustees, an assessment of the comparative merits and demerits of the applicants has to be undertaken before appointing non-hereditary trustees in a religious institution. In the said decision, the Division Bench noticed that no qualification for non-hereditary trustees had been prescribed. That guidelines were issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department, who was exercising the powers under the Act of 1951, presently exercised by the Malabar



Devaswom Board, after its constitution by the Amendment Act of 2008. Till the framing of statutory rules in the exercise of the powers under the Act, the aforesaid guidelines issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department, would govern the field. Section 46 of the Act deals with disqualifications of trustees. As per sub-section (1) of Section 46, a non-hereditary trustee shall cease to hold his office if he acquires any of the disqualifications enumerated in clauses (a) and (b) thereto. The qualifications contained in Ext.P1, which is in terms of guidelines dated 18.05.2004, are not at variance with the provisions contained in the Act of 1951. The contentions to the contra raised by the learned Senior Counsel for Malabar Devaswom Board can only be repelled as untenable and we do so.

126. The collateral challenge made against the guidelines dated 18.05.2004 by the learned counsel for the 8<sup>th</sup> respondent:-

The learned counsel for the 8<sup>th</sup> respondent would contend that the said respondent can raise a collateral challenge against the guidelines framed by the Commissioner of the Erstwhile Hindu Religious and Charitable Endowments Department, in this writ petition. In support of that contention the learned counsel would place reliance on the decision of the Apex Court in **Bharathidasan**

**University v. All India Council for Technical Education**

**[(2001) 8 SCC 676]**. Paragraphs 13 and 14 of that decision read thus;

'13. The AICTE cannot, in our view, make any regulation in the exercise of its powers under Section 23 of the Act, notwithstanding sub-section (1), which though no doubt enables such regulations being made generally to carry out the purposes of the Act, when such power is circumscribed by the specific limitation engrafted therein to ensure them to be "not inconsistent with the provisions of this Act and the Rules.....". So far as the question of granting approval, leave alone prior or post, Section 10(1)(k) specifically confines the limits of such power of AICTE only to be exercised vis-à-vis technical institutions, as defined in the Act and not generally. When the language is specific, unambiguous and positive, the same cannot be over-looked to give an expansive meaning under the pretext of a purposive construction to perpetuate an ideological object and aim, which also, having regard to the Statement of Objects and Reasons for the AICTE Act, are not warranted or justified. Therefore, the Regulation insofar as it compels the universities to seek for and obtain prior approval and not to start any new department or course or programme in technical education (Regulation 4) and empower itself to withdraw such approval, in a given case of contravention of the Regulations (Regulation 12) are directly opposed to and inconsistent with the provisions of Section 10(1)(k) of the Act and consequently void and unenforceable.

14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature

concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that Regulations made under Section 23 of the Act have "Constitutional" and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a University in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions.'

127. As already noticed hereinbefore, the guidelines dated 18.05.2004 were issued pursuant to the directions contained in the judgment of a Division Bench of this Court in **K.P. Vasudevan Namboothiri** (supra) when it was noticed that the absence of

guidelines or rules would lead to arbitrariness in the matter of selection and appointment of non-hereditary trustees, an assessment of the comparative merits and demerits of the applicants has to be undertaken before appointing non-hereditary trustees in a religious institution. In the said decision, the Division Bench noticed that no qualification for non-hereditary trustees had been prescribed. Till the framing of statutory rules in the exercise of the powers under the Act, the aforesaid guidelines issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department, will govern the field. As already noticed hereinbefore, the qualifications contained in Ext.P1, which are in terms of guidelines dated 18.05.2004, are not at variance with the provisions contained in the Act of 1951. The law laid down in the **Bharathidasan University [(2001) 8 SCC 676]** will not in any manner support the collateral challenge made by the 8<sup>th</sup> respondent against the guidelines framed by the Commissioner. In such circumstances, we find absolutely no merit in the aforesaid contention raised by the learned counsel for the 8<sup>th</sup> respondent, which can only be repelled as untenable, and we do so.

128. The eligibility and disqualification clause contained in the guidelines dated 18.05.2004 and Ext.P1 notification dated

19.01.2022:- As per clause (a) of the guidelines, an appointee shall be ordinarily a resident in the Taluk in which the temple is situated, and for this purpose, either his name in the electoral roll or address furnished in the ration card shall be the proof. As per clause (b), the appointee shall be a person who is in the habit of visiting the temple usually. As per clause (c), the appointee shall be a person believing in idol worship, and persons who are actively working for the welfare of the temple/temples, may be given preference. As per clause (d) of the guidelines dated 18.05.2004, the following category of persons need not be considered for appointment ordinarily (i) busy professionals; (ii) active politicians and office bearers of political parties; (iii) persons who had encroached Devaswom lands or against whom Devaswom has filed cases in a court of law; and (iv) persons who had filed litigations against the Devaswom.

129. In view of the provisions contained in Section 24 of the Act, 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.

130. In **Chathu Achan K. [2022 (6) KLT 388]**, this Court held that the provisions of clauses (3) and (4) of the notification issued by the Commissioner make it explicitly clear that, for appointment as non-hereditary trustee of the temple, the applicant should be a regular worshipper of the temple, who is prepared to actively work for the betterment of the temple. He should be a permanent resident of the Taluk in which the temple situates, who believes in idolatry. Persons who are busy with their employment, office bearers of political parties, active politicians or those indulging in active participation in the activities of a political party cannot aspire appointment as non-hereditary trustees of the temple. Therefore, the Commissioner has to take necessary steps to ensure that any appointment made as non-hereditary trustee of the temples under the control of Malabar Devaswom Board is strictly in terms of the disqualification and eligibility clauses provided in similar notifications. The said principle was reiterated in the decision in **Anantha Narayanan [2023:KER:9966]**.

131. In view of the statutory provisions referred to hereinbefore and the law laid down in the decisions referred to supra, the process of selection for appointment of non-hereditary trustees in temples which are controlled institutions under the Malabar Devaswom Board has to be considered by the 2<sup>nd</sup>

respondent Commissioner, Malabar Devaswom Board or the concerned Area Committee of Malabar Devaswom Board, as the case may be, in a fair and transparent manner, with an object of selecting most appropriate persons, who believe in temple worship, who have contributed something to the betterment of the temple, who are not otherwise engaged in any other employment, activities, etc. The process now being undertaken by the Malabar Devaswom Board, which is borne out from the files relating to Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner is not one which fulfills the objects sought to be achieved by the enactment of the Act of 1951 and the Amendment Act of 2008.

132. The directions contained in the judgment of a Division Bench of this Court in **K.P. Vasudevan Namboothiri** - Judgment dated 01.04.2004 in O.P.No.6131 of 2003 - has to be considered in the light of the statutory provisions referred to hereinbefore, which deals with the duties, powers and responsibilities of the non-hereditary trustees in temples which are controlled institutions under the Malabar Devaswom Board. The Division Bench envisaged the formation of guidelines to eliminate arbitrariness in the matter of appointment of non-hereditary trustees. It is thereafter that the guidelines dated 18.05.2004 was

issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments Department. Even after the issuance of the guidelines dated 18.05.2004 there is arbitrariness in the process of selection for appointing non-hereditary trustees in temples, which are controlled institutions under the Malabar Devaswom Board, which is evident from the facts and circumstances of the case on hand, as borne out from the files relating to Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner.

133. In the decision in **O.K. Kochukunju and another v. Malabar Devaswom Board and others [2024:KER:24264]** - Judgment dated 08.02.2024 in W.P.(C)No.42397 of 2022 - a Division Bench of this Court in which one among us [Anil K. Narendran, J.] was a party was dealing with a writ petition filed by the devotees of Sree Valliyoorkavu Devi Temple in Wayanad District, which is a controlled institution under the Malabar Devaswom Board, seeking a writ of mandamus commanding the Board and its Commissioner to take necessary action against the trustees of that temple for committing various acts resulting loss to the Devaswom and seeking an order directing the Executive Officer of that Devaswom to withdraw all funds and deposits of the Devaswom from Co-operative Societies/banks, institutions and



redeposit the same in Nationalised Banks, in order to secure the Devaswom funds. In that case this Court noticed Circular No.H9/1637/2010 dated 02.03.2010 issued by the Commissioner, Malabar Devaswom Board, whereby the opening of accounts of the temples which are controlled institutions under the Malabar Devaswom Board cannot be in a Co-operative Society. In the said decision, the Division Bench noticed that openly flouting the requirements of the circular dated 02.03.2010 [Ext.R4(e)] issued by the Commissioner, Malabar Devaswom Board, some of the Savings Accounts and Fixed Deposits of the said Devaswom were kept in Co-operative Societies. Paragraphs 1, 2 and 18 of the said circular were extracted in paragraph 13 of the said decision. Paragraph 13 of the decision reads thus;

"13. The document marked as Ext.R4(e) along with the counter affidavit filed by respondents 4 and 5 is a copy of circular No.H9/1637/2010 dated 02.03.2010 issued by the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board.

Paragraphs 1, 2 and 18 of that circular read thus;

"1. ക്ഷേത്രം പേരിലുള്ള എല്ലാ ബാങ്ക് അക്കൗണ്ടുകളും എക്സിക്യൂട്ടീവ് ഓഫീസറുടെയും ട്രസ്റ്റിബോർഡ് ചെയർമാൻ/മാനേജിംഗ് ട്രസ്റ്റി/ട്രസ്റ്റി/ഫിറ്റ് പേജൺ എന്നിവരുടെ ജോയിന്റ് അക്കൗണ്ടിലായിരിക്കേണ്ടതാണ്.

2. സഹകരണ ബാങ്കുകൾ, ദേശസാൽകൃത ബാങ്കുകൾ/ പോസ്റ്റാഫീസ് സേവിംഗ് ബാങ്കുകൾ ഷെഡ്യൂൾഡ് ബാങ്ക്/ട്രഷറി എന്നിവയിൽ ക്ഷേത്രം പേരിലുള്ള

അക്കൗണ്ടുകൾ തുടങ്ങാറുണ്ട്. ഏതെങ്കിലും ക്ഷേത്രത്തിന്, ഇത്തരം ബാങ്കുകളിലല്ലാതെ, അക്കൗണ്ടുകൾ നിലവിലുണ്ടെങ്കിൽ, ആയത് ഉടൻ പ്രാബല്യത്തിൽ നിർത്തലാക്കി മേൽ കാണിച്ച് ബാങ്കുകളിൽ ക്ഷേത്രം പേരിൽ അക്കൗണ്ടുകൾ തുറക്കേണ്ടതും അപ്രകാരം അക്കൗണ്ടിലെ ബാലൻസ് മേൽപറഞ്ഞ നിർത്തലാക്കപ്പെട്ട ഏതെങ്കിലും ബാങ്കിലേക്ക് മാറ്റേണ്ടതുമാണ്. ഒരു ക്ഷേത്രത്തിന് ഒരു ബാങ്കിൽ മാത്രമെ അക്കൗണ്ട് പാടുള്ളൂ. (എന്നാൽ സ്ഥിര നിക്ഷേപത്തിന്റെ കാര്യത്തിൽ കാലാവധി തീരുന്ന മുറയ്ക്ക്).

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18. ലോക്കൽ ഫണ്ട് വകുപ്പിന്റെ ഓഡിറ്റിങ് നടത്തുന്നതിനായി ഓരോ വർഷത്തെയും ഡിസംബർ 31 വരെയുള്ള വരവ് ചെലവ് കണക്കുകളും മറ്റു വിശദ വിവരങ്ങളും തൊട്ടടുത്ത വർഷം ഫെബ്രുവരി മാസം 10-30 തീയതിക്കകം ബന്ധപ്പെട്ട ലോക്കൽ ഫണ്ട് അധികാരിക്ക് സമർപ്പിക്കേണ്ടതാണ്. പകർപ്പ് കമ്മീഷണർ അസിസ്റ്റന്റ് കമ്മീഷണർക്ക് സമർപ്പിക്കേണ്ടതാണ്."

134. In paragraph 14 of that decision, the Division Bench noticed the specific contention raised by the petitioners in paragraph 8 of the reply affidavit dated 24.09.2023 that the beneficiaries of the opening of such Savings Account/Fixed Deposits are CPM ruled Co-operative Banks and CPM administered Co-operative Societies. Paragraph 14 of the decision reads thus;

"14. On 03.10.2023, the petitioners have filed a reply affidavit dated 24.09.2023. Paragraph 8 of the reply affidavit reads thus;

"8. There is blatant violation of Ext.R4(e) circular issued by the Commissioner dated 02.03.2010. Clauses 1, 2, 8 etc., are flagrantly overlooked. The CPM ruled Co-operative Banks

are benefitted by the Devaswom funds and the present-day trend of Co-operative Society deposits in a vacuum is to be judicially taken note of by this Hon'ble Court. The deposits are with Mananthavady Urban Co-operative Society, Kerala Bank, Mananthavady Rural Co-operative Society, Thirunelli Co-operative Temple Employees Society, Co-operative Rural Society, Suseela Gopalan Memorial Vanitha Co-operative Society, Waynad District Temple Employees Co-operative Society and North Waynad Rubber and Agricultural Marketing Society. Crores of Rupees have no security in the CPM administered Co-operative Societies. These facts are borne out from Exts.P2 and P4 reports of the Assistant Commissioner."

The list of those Banks/Co-operative Societies was extracted in paragraph 16 of that decision.

135. In paragraph 18 of the decision, the Division Bench noticed that as per the report dated 22.08.2022 (Ext.P2) submitted by the Assistant Commissioner, Thalassery to the Commissioner, Malabar Devaswom Board, a sum of Rs.65,90,360/- obtained by auctioning the Kuthaka right in the annual festival for the year 2022 is deposited in Kerala Bank and in Co-operative Urban Society. In the report dated 15.10.2022 (Ext.P4) of the Assistant Commissioner to the Commissioner it

was pointed out that the deposits of Devaswom funds in the Co-operative Societies may invite audit objection. Paragraph 18 of the decision reads thus;

"18. On 11.10.2023, the learned counsel for the petitioners pointed out Ext.P2 report dated 22.08.2022 submitted by the Assistant Commissioner, Thalassery to the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, wherein it is pointed out that a sum of Rs.65,90,360/- obtained by auctioning the Kuthaka right in the annual festival for the year 2022 is deposited in Kerala Bank and in Co-operative Urban Society. In Ext.P4 report dated 15.10.2022 of the Assistant Commissioner to the 2<sup>nd</sup> respondent Commissioner it is pointed out that the deposits of Devaswom funds in the Co-operative Societies may invite audit objection. The relevant paragraph of Ext.P4 report reads thus;

"2022 ലെ ലേലത്തിൽ 71,80,000/- രൂപ ലഭിച്ചതിൽ 28 ലക്ഷം രൂപയും വിവിധ സൊസൈറ്റികളിലായി ഫിക്സ്ഡ് ഡെപ്പോസിറ്റ് ആയി. കേരള ബാങ്കിൽ നിന്നും മറ്റു ബാങ്കു ലിൽ നിന്നും തുക മാറ്റി നിക്ഷേപിച്ചിട്ടുള്ളതായി കാണുന്നു. കോ-ഓപറേറ്റീവ് മൽ സൊസൈറ്റി ലിമിറ്റഡ് (21 ലക്ഷം), സുശീല ഗോപാലൻ സ്റ്റോറക് വനിത കോ-ഓപറേറ്റീവ് (2) ലക്ഷം. വയനാട് ജില്ല ടൈപിംഗ് എംപ്ലോയീസ് കോ-ഓപറേറ്റീവ് സൊസൈറ്റി (2ലക്ഷം) നോർത്ത് വയനാട് റബ്ബർ & അഗ്രികൾച്ചർ മാർക്കറ്റിംഗ് സൊസൈറ്റി (3 ലക്ഷം) എന്നീ സൊസൈറ്റികളിലാണ് നിക്ഷേപിച്ചിട്ടുള്ളത്. ഇത്രയും തുക വിവിധ സഹകരണ സൊസൈറ്റികളിൽ നിക്ഷേപിച്ചത് ഓഡിറ്റ് തടസ്സവാദത്തിന് കാരണമായേക്കാം. ആയതിനാൽ കാലാവധി (1 വർഷം) പൂർത്തിയാകുന്ന മുറയ്ക്ക് സൊസൈറ്റികളിലെ നിന്നും പിൻവലിച്ച് മറ്റ് ബാങ്കുകളിലേക്ക് മാറ്റുന്നതിന് ബോർഡിൽ യുക്തമായ തീരുമാനം കൈക്കൊള്ളാവുന്നതാണ്. ഈ ക്ഷേത്രത്തിൽ ആകെ 28 എണ്ണം സ്ഥിരനിക്ഷേപങ്ങളിലായി 1,42,98,530/-

രൂപയുടെ സ്ഥിരനിക്ഷേപ പദ്ധതിയിൽ 2019 ൽ ലേലത്തിന് 85,14,880/- രൂപ ലഭിച്ചിരുന്നു. ചെലവ് ഏതാണ്ട് 34,25,203/- രൂപയാണെന്നും കാണുന്നു. എന്നാൽ 2022 ൽ ലേലത്തുക മുഴുവൻ കിട്ടിയില്ലെന്ന് മാത്രമല്ല, ഏകദേശം പ്രാഥമികമായി വിലയിരുത്തിയതിൽ 40 ലക്ഷത്തിന് മേൽ ചെലവ് വന്നിട്ടുമുണ്ട്. 2020 വരെയുള്ള ഓഡിറ്റ് ഈ മാസം 17 മുതൽ നടക്കുന്നുണ്ട്. 2022 വർഷം വരെ ഓഡിറ്റ് പൂർത്തിയാക്കുന്നതിന് വർഷം കഴിഞ്ഞ ഉടൻ നടപടി സ്വീകരിക്കുന്നതാണ്. ഓഡിറ്റ് കഴിഞ്ഞാൽ മാത്രമേ ഉത്തരവുമായി ബന്ധപ്പെട്ട അപാകതകൾ സംബന്ധിച്ച് കൂടുതൽ വ്യക്തത ലഭിക്കുകയുള്ളൂയെന്നും ബോധിപ്പിക്കുന്നു.”

136. In paragraph 19 of the decision in **O.K. Kochukunju [2024:KER:24264]** the Division Bench noticed that the 5<sup>th</sup> respondent in W.P.(C)No.42397 of 2022, who is a non-hereditary trustee of Sree Valliyoorkavu Devaswom, is a person nominated by a political party, who is also a Director of Mananthavady Co-operative Urban Society, a society controlled by that political party. In that decision, the Division Bench noticed that despite the violation of the Circular dated 02.03.2010 is being pointed out in the report dated 15.10.2022 of the Assistant Commissioner, Thalassery, a copy of which is marked as Ext.P4 in that writ petition, the Malabar Devaswom Board or the Commissioner has not taken any action on such violation. Paragraphs 19 to 21 of that decision read thus;

‘19. In paragraph 4 of the reply affidavit, the petitioner has stated that the 5<sup>th</sup> respondent, who is a non-hereditary

trustee of Sree Valliyoorkavu Devaswom, is a person nominated by a political party, who is also a Director of Mananthavady Co-operative Urban Society controlled by that political party. Paragraph 4 of the reply affidavit reads thus;

"4. In 2023, Ulsavam, Chantha Lelam was confirmed for Rs.1.20 Crores (Rs.60.60 lakhs in 2022), Exhibition and Trade Fair was confirmed for Rs.38 lakhs (Rs.22 lakhs in 2022). The reduction of auction amount basing COVID as a reason is flimsy and beyond credibility as the beneficiaries (the 7<sup>th</sup> respondent and the 8<sup>th</sup> respondent) are the direct associates of respondents 4 and 5. The 5<sup>th</sup> respondent non-hereditary trustee is a party nominee; being Mananthavady CPM ruled Local Committee Member and Director of CPM Ruled Mananthavady Co-operative Urban Society."

20. On 11.10.2023, during the course of arguments, on a query made by this Court, the learned counsel for the 4<sup>th</sup> respondent Hereditary Trustee, who is also appearing for the 5<sup>th</sup> respondent Non-Hereditary Trustee, admitted that the 5<sup>th</sup> respondent is one of the Directors of Mananthavady Urban Co-operative Society Ltd. The learned counsel submitted that some of the savings accounts/fixed deposit accounts of Sree Valliyoorkavu Devaswom were opened in Co-operative Societies more than 10 years back. On another query made by this Court, the learned Standing Counsel for Malabar Devaswom Board submitted that, if Devaswom funds are deposited in the accounts maintained in the Co-operative Societies, it is in violation of the terms of Ext.R4(e)

circular dated 02.03.2010 issued by the Commissioner, Malabar Devaswom Board. The learned Standing Counsel sought time to get instructions on the action, if any, taken by the 2<sup>nd</sup> respondent Commissioner on Ext.P4 report dated 15.10.2022 of the Assistant Commissioner in which the irregularity in Sree Valliyoorkavu Devaswom maintaining fixed deposits in Co-operative Societies was specifically pointed out.

21. In the order dated 11.10.2023, this Court found that the Devaswom funds of Sree Valliyoorkavu Devaswom are kept in the savings accounts and fixed deposits maintained in various Co-operative Societies, in violation of the terms of Ext.R4(e) circular dated 02.03.2010 issued by the Commissioner, Malabar Devaswom Board. Despite the said fact being pointed out in Ext.P4 report dated 15.10.2022 of the Assistant Commissioner, Thalasserry, the Malabar Devaswom Board or the Commissioner has not taken any action on the violation of the terms of Ext.R4(e) circular.'

137. After the order of the Division Bench dated 14.10.2023 in W.P.(C)No.42397 of 2022, the Malabar Devaswom Board has taken a decision on 17.10.2023, a copy of which was marked as Ext.R2(a) in that writ petition, based on which Circular No.H.7/3309/2022/MDB dated 18.10.2023 has been issued. Paragraphs 22 to 25 of the decision in W.P.(C)No.42397 of 2022 read thus;

'22. After the order of this Court dated 11.10.2023, the Malabar Devaswom Board has taken Exts.R2(a) Decision No.71 in its meeting held on 17.10.2023, based on which

the Commissioner, Malabar Devaswom Board issued Ext.R2(b) Circular No.H.7/3309/2022/MDB dated 18.10.2023, which were placed on record along with I.A.No.4 of 2023 filed by Malabar Devaswom Board. In the affidavit filed in support of I.A.No.4 of 2023, it is stated that the temples under the supervisory jurisdiction of the Board are bound to follow the circular dated 02.03.2010 as well as the Rules framed under Section 100(2)(k) of the Madras Hindu Religious and Charitable Endowments Act. In the meeting held on 17.10.2023, the Board has considered the matter and resolved by Ext.R2(a) decision No.71, to issuing a circular reiterating Circular No.H9.1637/2010 dated 02.03.2010; with certain modifications. Accordingly, the Commissioner, Malabar Devaswom Board issued Ext.R2(b) Circular No.H.7/3309/2022/MDB dated 18.10.2023.

23. Ext.R2(a) decision No.71 taken in the meeting of the Malabar Devaswom Board held on 17.10.2023 reads thus;

“തീരുമാനം: (71)

തീയതി :17/10/2023

ശ്രീ വള്ളിയൂർകാവ് ഭഗവതി ദേവസ്വത്തിലെ 2022 വർഷം ആറാട്ട് മഹോത്സവം, പ്രദർശന വിപണന മേള, സാമ്പത്തിക ഇടപാട് സംബന്ധിച്ച് അസിസ്റ്റന്റ് കമ്മീഷണർ 22.08.2022 ന് സമർപ്പിച്ച റിപ്പോർട്ട് ബോർഡ് യോഗം വിശദമായി ചർച്ച ചെയ്തു. ഉത്സവവുമായി ബന്ധപ്പെട്ട സാമ്പത്തിക ഇടപാടുകൾ സുതാര്യമായും നിയമാനുസൃതവും നടത്തുന്നതിന് ക്ഷേത്രഭരണാധികാരികളുടെ ഭാഗത്തുനിന്നും വീഴ്ച സംഭവിച്ചിട്ടുള്ളതായി പ്രാഥമികമായി യോഗം വിലയിരുത്തി. എങ്കിലും നടപടികൾ സ്വീകരിക്കുന്നതിന് നിർദ്ദിഷ്ട ട്രസ്റ്റിമാരുടെ കാലയളവിലെ ക്ഷേത്രഭരണം സംബന്ധിച്ച് വിശദമായ പരിശോധന നടത്തുന്നതിന് സ്പെഷ്യൽ ടീമിനെ നിയോഗിക്കുന്നതിന് തീരുമാനിച്ചു. പ്രസ്തുത റിപ്പോർട്ടിന്റെ അടിസ്ഥാനത്തിൽ നടപടി സ്വീകരിക്കാൻ തീരുമാനിച്ചു. ക്ഷേത്രത്തിലെ നിക്ഷേപങ്ങൾ



കോ-ഓപ്പറേറ്റീവ് സൊസൈറ്റികളിൽ നിക്ഷേപം നടത്തിയത് വസ്തുതാപരമായി ശരിയാണെന്ന് ബോധ്യപ്പെടുകയുണ്ടായി. എന്നാൽ ഇതുവരെ ഇതു സംബന്ധിച്ച് ഓഡിറ്റ് റിപ്പോർട്ടുകളിൽ ഒബ്ജക്ഷൻ ഉണ്ടായിട്ടില്ല. എന്നിരുന്നാലും മലബാർ ദേവസ്വം ബോർഡിന് കീഴിലെ പല ക്ഷേത്രങ്ങളിലും ഇത്തരം കോ-ഓപ്പറേറ്റീവ് സൊസൈറ്റികളിൽ സ്ഥിര നിക്ഷേപം നടത്തിയതായി ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ട്.

പലിശയിനത്തിൽ കൂടുതൽ തുക ലഭ്യമാവും എന്ന കാരണത്താലാണ് പല ക്ഷേത്രഭരണാധികാരികളും ഇത്തരം നിക്ഷേപങ്ങൾ നടത്തിയിട്ടുള്ളത്. എന്നിരുന്നാൽ കൂടി കാലാവധി പൂർത്തിയാവാത്ത സ്ഥിര നിക്ഷേപങ്ങൾ പിൻവലിക്കുമ്പോൾ പലിശയിനത്തിൽ വലിയ തുക നഷ്ടപ്പെടാൻ ഇടയാവുമെന്നതിനാൽ ഇത്തരം കോ-ഓപ്പറേറ്റീവ് സൊസൈറ്റികളിൽ നിക്ഷേപമാക്കിയിട്ടുള്ള നിക്ഷേപങ്ങൾ കാലാവധി പൂർത്തിയാകുന്ന മുറയ്ക്ക് പിൻവലിച്ച് കമ്മീഷണറുടെ സർക്കുലർ നമ്പർ. എച്ച്9.1637/2010 തീയതി.02/03/2010 -ലെ രണ്ടാം അനുചര പ്രകാരമുള്ള സ്ഥാപനങ്ങളിലോ 100(2)(K) സ്ഥാപനങ്ങളിലോ മാറ്റി നിക്ഷേപിക്കുന്നതിനും മേലിൽ ചട്ടപ്രകാരവും സർക്കുലർ പ്രകാരവുമുള്ള സ്ഥാപനങ്ങളിൽ അല്ലാതെ സൊസൈറ്റികളിൽ നിക്ഷേപം നടത്താൻ പാടില്ലെന്ന് കർശന നിർദ്ദേശം ഉൾപ്പെടുത്തി സർക്കുലർ പുറപ്പെടുവിക്കുന്നതിനും തീരുമാനിച്ചു.”

24. Ext.R2(b) circular dated 18.10.2023 issued by the Commissioner, Malabar Devaswom Board, based on Ext.R2(a) decision of the Board, reads thus;

“മലബാർ ദേവസ്വം ബോർഡിനു കീഴിലുള്ള ക്ഷേത്രങ്ങളിൽ പണമിടപാടുകളും മറ്റും സംബന്ധിച്ച് വിശദമായ മാർഗ്ഗനിർദ്ദേശങ്ങൾ മേൽ സൂചന പ്രകാരം പുറപ്പെടുവിച്ചിരുന്നു. പ്രസ്തുത മാർഗ്ഗനിർദ്ദേശങ്ങളിൽ താഴെ പറയുന്ന കാര്യങ്ങൾ കൂടി പരിഗണിച്ച് മാത്രമേ ക്ഷേത്രഭരണാധികാരികൾ നടപടികൾ സ്വീകരിക്കാൻ പാടുള്ളൂ എന്ന് നിഷ്കർഷിക്കുന്നു.

- 1) കേരള സംസ്ഥാന സഹകരണ നിയമപ്രകാരം ക്ഷേത്രത്തിന് സമീപമുള്ളതും ലാഭകരമായ നിലയിൽ പ്രവർത്തിച്ചു വരുന്നതുമായ സഹകരണ ബാങ്കുകളിൽ അല്ലാതെ, മേലിൽ സഹകരണ നിയമ പ്രകാരം രജിസ്റ്റർ ചെയ്യപ്പെടുന്ന സൊസൈറ്റികളിൽ ക്ഷേത്ര ഫണ്ട് സ്ഥിരനിക്ഷേപമാക്കുകയോ എസ്.ബി, കറണ്ട് അക്കൗണ്ട് നിലനിർത്തുകയോ ചെയ്യാൻ പാടുള്ളതല്ല.
- 2) നിലവിൽ ബോർഡിന് കീഴിലുള്ള ഏതെങ്കിലും ക്ഷേത്രങ്ങൾ, ക്ഷേത്രത്തിന്റെ പേരിൽ സഹകരണ സൊസൈറ്റികളിൽ പണം നിക്ഷേപിച്ചിട്ടുള്ള പക്ഷം നിക്ഷേപ കാലാവധി പൂർത്തിയാകുന്ന മുറയ്ക്ക് പിൻവലിച്ച് മേൽ സൂചന സർക്കുലർ നിർദ്ദേശ പ്രകാരമുള്ള ബാങ്കുകളിൽ നിക്ഷേപിക്കേണ്ടതാണ്.
- 3) ഒരു ക്ഷേത്രത്തിന് ഒരു ബാങ്കിൽ മാത്രമേ അക്കൗണ്ട് പാടുള്ളൂ എന്ന വ്യവസ്ഥയിൽ ഇളവ് വരുത്തി അത്യാവശ്യമുള്ള പക്ഷം, എസ്.ബി അക്കൗണ്ടുകളുടെ എണ്ണം ഏറ്റവും കുറഞ്ഞ എണ്ണത്തിൽ നിലനിർത്തണമെന്ന വ്യവസ്ഥയിൽ, സർക്കുലറിൽ വ്യവസ്ഥ ചെയ്ത പ്രകാരമുള്ള ഒന്നിലധികം ബാങ്കുകളിൽ അക്കൗണ്ടുകൾ ആകാമെന്ന് മേൽ സൂചന സർക്കുലറിലെ 2-ാം അനുചരഭാഗത്തിൽ ഭേദഗതി വരുത്തുന്നു.”

25. We do not propose to consider the legality of Ext.R2(a) decision taken by the Malabar Devaswom Board on 17.10.2023, to the extent of making certain modifications to the earlier circular dated 02.03.2010. Having considered the pleadings and materials on record and also the submissions made at the Bar, we deem it appropriate to direct respondents 1 to 3 to take necessary steps to ensure that the Devaswom funds of Sree Valliyoorkavu Devaswom are deposited by its Board of Trustees and the Executive Officer, in Nationalised Banks or Scheduled Banks or other institutions specified in the rules made under Section 100(2)(k) of the Madras Hindu Religious and Charitable

Endowments Act, read with circular No.H9.1637/2010 dated 02.03.2010. At the time of audit of accounts, the additional 14<sup>th</sup> respondent Deputy Director, State Audit Department, Malabar Devaswom Audit shall ensure that the deposit of Devaswom funds of Valliyoorkavu Devaswom are strictly in terms of the statutory requirements. Any violation shall be dealt with appropriately with stern action. It would be open to the petitioners to specifically point out the violation of those statutory requirements before the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, in which event the said respondent shall consider the same and pass appropriate orders thereon, with notice to the petitioners, the Executive Officer of the Valliyoorkavu Devaswom and its Board of Trustees.

138. A devotee of Thootha Bhagavathi Temple, another controlled institution under the Malabar Devaswom Board, has filed W.P.(C)No.28126 of 2023 seeking a writ of mandamus commanding the Commissioner, Malabar Devaswom Board to conduct an enquiry into the activities of respondents 6 to 9 therein, including cutting and removing of trees from the Devaswom land of that temple and to restrain the 11<sup>th</sup> respondent therein, who is the Secretary of CPI(M), Thootha Town Branch Committee, from using the pathway through the temple property, which is cut open illegally, and for other reliefs. In that writ petition, which is pending consideration, this Court passed an interim order dated 20.10.2023, whereby the Assistant

Commissioner, the Executive Officer, Thootha Bhagavathi Temple and also the Station House Officer, Cherpulassery Police Station were directed to take necessary steps to ensure that no activity in connection with the inauguration of the newly constructed building of 'CPI(M) Thootha Town Branch' which was scheduled to be held on 21.10.2023, takes place in the Devaswom land of Thootha Bhagavathy Temple.

139. In the interim order dated 20.10.2023 in W.P.(C)No.28126 of 2023, this Court extracted the photographs of the newly constructed building of 'CPI(M) Thootha Town Branch', the inauguration of which was scheduled to be held on 21.10.2023, showing the steps leading to the newly constructed building, which are of recent origin. In respect of the said construction, the Station House Officer, Cherpulasserry Police Station received two complaints dated 03.02.2023 and 25.08.2023 made by Thootha Bhagavathy Kshetra Raksha Samithi. One complaint was regarding the cutting and removal of a teak tree standing in the temple property and another complaint was regarding cutting open a pathway in the Devaswom land as a passage to the newly constructed building of 'CPI(M) Thootha Town Branch'. The photographs marked as Ext.P15 in

W.P.(C)No.38468 of 2023

W.P.(C)No.28126 of 2023, which are extracted in the order of this Court dated 28.10.2023, are extracted hereunder;



140. In paragraph 11 of the interim order dated 20.10.2023 in W.P.(C)No.28126 of 2023, this Court noticed that the above photographs prima facie show that the steps leading to the newly constructed building are of recent origin. Paragraph 11 of that order reads thus;

"11. The learned Senior Government Pleader, on instructions from the additional 24<sup>th</sup> respondent, Station House Officer, Cherpulassery Police Station, would submit that subsequent to the order of this Court dated 25.08.2023, the Station House Officer received two complaints dated 03.02.2023 and 25.08.2023 made by Thootha Bhagavathy Kshethra Raksha Samithi. One complaint is regarding the cutting and removal of a teak tree standing in the temple property and another complaint is regarding cutting open a pathway in the Devaswom land as passage to the newly constructed building. The photographs reproduced hereinbefore at paragraph No.2 prima facie show that the steps leading to the newly constructed building are of recent origin."

(underline supplied)

141. In paragraph 17 of the interim order dated 20.10.2023 in W.P.(C)No.28126 of 2023, this Court noticed that it is the duty of the trustees of Thootha Bhagavathi Temple to be faithful to the Devaswom and manage, protect and safeguard the interest and properties of the Devaswom, with reasonable diligence. Therefore, the Malabar Devaswom Board and its officials are duty-bound to exercise their supervisory control in order to ensure that the interests and properties of the Devaswom are protected and safeguarded by its trustees and the employees of the Devaswom. Any act of 'fence eating the crops' should be dealt with sternly.

142. During the pendency of W.P.(C)No.28126 of 2023 another devotee of Goddess Bhagavathi of Thootha Bhagavathi

Temple filed W.P.(C)No.475 of 2024, seeking a writ of certiorari to quash the order dated 21.11.2023 (Ext.P1 order in that writ petition) issued by the Assistant Commissioner, on behalf of the Area Committee of Malabar Devaswom Board, whereby respondents 5 to 8 therein are appointed as non-hereditary trustees of Thootha Bhagavathi Temple.

143. In W.P.(C)No.475 of 2024, it is alleged that respondents 5 to 8 therein are active politicians in the locality and they are disqualified to be appointed as non-hereditary trustees, in view of the law laid down by this Court in **Chathu Achan v. State of Kerala [2022 (6) KLT 388]** and in **Anantha Narayanan v. Malabar Devaswom Board and others [2023:KER:9966]**. The 5<sup>th</sup> respondent therein is a member of CPI(M) Thootha Town Branch Committee; the 6<sup>th</sup> respondent therein is a member of CPI(M) Nalalumkunnu Branch Committee; the 7<sup>th</sup> respondent therein is a member of CPI(M) Thootha Town Branch Committee; and the 8<sup>th</sup> respondent therein is a member of CPI(M) Moochithottam Branch Committee.

144. In W.P.(C)No.475 of 2024, this Court granted an interim order dated 12.01.2024 staying the operation of the order dated 21.11.2023 (Ext.P1) issued by the Assistant Commissioner, on behalf of the Area Committee, for a period of two weeks, thereby



restraining respondents 5 to 8 from acting as non-hereditary trustees of Thootha Bhagavathi Temple. The said interim order, which was extended from time to time is still in force. W.P.(C)No.28126 of 2023 and W.P.(C)No.475 of 2024 were listed along with this writ petition on 27.02.2024 and also on the subsequent posting dates, till those cases were delinked, as service of notice is not complete on W.P.(C)No.28126 of 2023.

145. In **A.A. Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]** a Three-Judge Bench of the Apex Court held that the properties of deities, temples and Devaswom Boards require to be protected and safeguarded by their trustees/archakas/shebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of 'fence eating the crops' should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty



of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

146. In **Travancore Devaswom Board v. Mohanan Nair [(2013) 3 KLT 132]** a Division Bench of this Court noticed that in **A.A. Gopalakrishnan [(2007) 7 SCC 482]** a Three-Judge Bench of the Apex Court emphasised that it is the duty of the courts to protect and safeguard the interest and properties of the religious and charitable institutions. The Division Bench further noticed that the relevant principles under the Hindu law will show that the deity is always treated similar to that of a minor and there are some points of similarity between a minor and a Hindu idol. The High Court is the guardian of the deity and apart from the revisional jurisdiction under Section 103 of the Kerala Land Reforms Act, 1963, the High Court has inherent jurisdiction and the doctrine of *parens patriae* will also apply in exercising the jurisdiction.

147. Sree Vairamcode Bhagavathi Devaswom is a controlled institution under the Malabar Devaswom Board, which is a listed temple in notification No.HR 3/5691/93 dated 15.02.1994 issued by the Commissioner of erstwhile Hindu Religious and Charitable Endowments (Administration) Department. As held in the decisions referred to supra, it is the duty of the non-hereditary

trustees to be faithful to the Devaswom and manage, protect and safeguard the interest and properties of the Devaswom, with reasonable diligence. The Malabar Devaswom Board and its officials are duty-bound to exercise their supervisory control in order to ensure that the interests and properties of the Devaswom are protected and safeguarded by its non-hereditary trustees and the employees of the Devaswom. Any act of 'fence eating the crops' should be dealt with sternly by the Board and its officials.

148. As already noticed hereinbefore, in view of the provisions contained in Chapter II of the Act of 1951, as amended by the Amendment Act of 2008, the Malabar Devaswom Board and the authorities under the Board, including the Commissioner, have essentially the duty and obligation to act in trust. In view of the provisions contained in Section 24 of the Act, 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. Therefore, in the matter of the appointment of non-hereditary trustees in religious institutions, the competent authority in the Board has a duty to

act fairly, and the fairness in the action must be demonstrable from the records and also the decision. The decision taken by the competent authority should disclose an assessment of the comparative merits and demerits of the applicants, with specific reference to the disqualification and eligibility clauses provided in the guidelines dated 18.05.2004 issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department, and the files should disclose the manner in which such an assessment has been made by the competent authority.

149. As already noticed hereinbefore, it is after the decision of the Division Bench in **K.P. Vasudevan Namboothiri** (supra) that the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department issued guidelines dated 18.05.2004 for the selection of non-hereditary trustees in the Malabar area under the control of that Department. That guidelines were issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department, who was exercising the powers under the Act of 1951, presently exercised by the Malabar Devaswom Board, after its constitution by the Amendment Act of 2008. Till the framing of statutory rules in the exercise of the powers under the Act, the

aforesaid guidelines issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department, would govern the field.

150. In view of the provisions contained in clause (a) of the guidelines dated 18.05.2004, a person appointed as a non-hereditary trustee shall be ordinarily a resident in the Taluk in which the temple is situated. As per clause (b), he shall be a person who is in the habit of visiting the temple usually. As per clause (c), he shall be a person believing in idol worship, and persons who are actively working for the welfare of the temple/ temples may be given preference. In view of the provisions contained in clause (d) of the guidelines, the following category of persons need not be considered for appointment ordinarily (i) busy professionals; (ii) active politicians and office bearers of political parties; (iii) persons who had encroached Devaswom lands or against whom Devaswom has filed cases in a court of law; and (iv) persons who had filed litigations against the Devaswom. As per clause (e) of the guidelines, when the comparative merits and demerits are difficult to decide as above, the educational qualification shall be taken as a determinant factor.

151. As per clause (f) of the guidelines dated 18.05.2004, while making an appointment, as far as possible, persons who can

work as a team for the welfare and development activities of the temple shall be appointed. As per clause (i) of the guidelines, in case appointments are made, not in accordance with these guidelines, the reason therefor shall be recorded. The report of the officer conducting an enquiry as to the suitability of the applicants shall contain specific remarks with regard to the above points. Therefore, any appointments made by the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board or the concerned Area Committee, as the case may be, as non-hereditary trustees of Devaswoms/Temples which are controlled institutions under the Malabar Devaswom Board, shall be strictly in terms of the disqualification and eligibility clauses in the guidelines dated 18.05.2004 issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department and the law laid down by this Court in **Chathu Achan [2022 (6) KLT 388]** and **Anantha Narayanan [2023:KER: 9966]**, after eliminating active politicians and office bearers of political parties, busy professionals, etc. from the zone of consideration.

152. A fair and transparent mechanism in the matter of appointment of non-hereditary trustees in Devaswoms/Temples, till rules are made under the Act:- As already noticed hereinbefore,

the applications received pursuant to Ext.P1 notification dated 19.01.2022 issued by the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, were forwarded by the Assistant Commissioner to the 2<sup>nd</sup> respondent Commissioner along with a report dated 23.08.2023 of the Inspector, Manjeri Division. The report dated 11.09.2023 of the Assistant Commissioner is nothing but a verbatim reproduction of the conclusion of the Inspector in his report dated 23.08.2023. That report was placed before the Board along with an endorsement regarding the decision taken by the Establishment Standing Committee to make a recommendation to the Board. Thereafter, the Board vide decision No.7 dated 17.10.2023 decided to appoint respondents 5 to 8 as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom for a period of two years, based on which the 2<sup>nd</sup> respondent Commissioner issued Ext.P8 order dated 25.10.2023.

153. During the course of arguments, the submission made by the learned Senior Counsel for Malabar Devaswom Board is that, though the appointment of non-hereditary trustees in the controlled institutions under the Malabar Devaswom Board has to be made by the 2<sup>nd</sup> respondent Commissioner in view of the provisions contained in Section 39 of the Act, considering the fact that more than one thousand temples are controlled institutions

under the Board, with the limited administrative set up in the Board, it is not feasible for the Commissioner to have direct involvement in the process of selection of non-hereditary trustees of such institutions.

154. Having considered the submissions made by the learned Senior Counsel for Malabar Devaswom Board on the above aspect, we deem it appropriate to issue the following directions in the matter of appointment of non-hereditary trustees in Devaswoms/Temples, which are controlled institutions under the Malabar Devaswom Board, in order to ensure a fair and transparent mechanism for such appointment, taking into consideration the requirements of the provisions contained in the Madras Hindu Religious and Charitable Institutions Act, till rules are made for that purpose under the said Act.

(i) The notifications issued for the appointment as non-hereditary trustees in Devaswoms/Temples, which are controlled institutions under the Malabar Devaswom Board, shall be published in a local daily having wide circulation. The notification shall also be published in the notice board of the Devaswom/Temple, at a prominent place, for the information of the devotees, and also in the notice board of the concerned Local Self-Government Institution and the Village Office.

(ii) Once applications are received, the details of the applicants shall be exhibited on the notice board of the

Devaswom/Temple, at a prominent place, so as to enable the devotees to point out the disqualifications, if any, of any of the applicants, by submitting written objections before the 2<sup>nd</sup> respondent Commissioner or the concerned Area Committee, as the case may be, furnishing therewith their name, address and mobile number. Those objections shall also be dealt with appropriately by the 2<sup>nd</sup> respondent Commissioner or the concerned Area Committee, as the case may be, after obtaining individual reports on those complaints from the concerned Divisional Inspector.

(iii) In the case of Devaswoms/Temples in which appointment of non-hereditary trustees is made by the concerned Area Committee, the evaluation of the applicants with reference to the report of the concerned Divisional Inspector shall be made by a Committee consisting of a member of the Area Committee to be nominated by its Chairman, the concerned Assistant Commissioner and the hereditary trustee of the Devaswom/Temple. In the absence of a hereditary trustee, the Tantri or Melsanthi of the Devaswom/Temple shall be a member of that Committee. The said Committee shall have a comparative assessment of the applicants with specific reference to the eligibilities and disqualifications provided in the guidelines dated 18.05.2004 issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department and the said assessment shall be the basis for the appointment of non-hereditary trustees by the concerned Area Committee.

(iv) In the case of Devaswoms/Temples in which appointment of non-hereditary trustees is made by the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, the



evaluation of the applicants with reference to the report of the concerned Divisional Inspector shall be made by a Committee consisting of a member of the concerned Area Committee to be nominated by the Commissioner, the concerned Assistant Commissioner and the hereditary trustee of the Devaswom/Temple. In the absence of a hereditary trustee, the Tantri or Melsanthi of the Devaswom/Temple shall be a member of that Committee. The said Committee shall have a comparative assessment of the applicants with specific reference to the eligibilities and disqualifications provided in the guidelines dated 18.05.2004 issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department and the said assessment shall be the basis for the appointment of non-hereditary trustees by the Commissioner, Malabar Devaswom Board.

In the above circumstances, this writ petition is disposed of by setting aside Ext.P8 order dated 25.10.2023 of the 2<sup>nd</sup> respondent Commissioner, Malabar Devaswom Board, and by directing the Commissioner to make appointment as non-hereditary trustees of Sree Vairamcode Bhagavathi Devaswom, after a comparative assessment of the applicants by a committee constituted in terms of the directions contained hereinbefore, strictly in accordance with law and taking note of the law laid down hereinbefore and also that laid down in **Chathu Achan [2022 (6) KLT 388]** and **Anantha Narayanan [2023:KER:9966]**. The

exercise in this regard shall be undertaken and completed, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a certified copy of this judgment. The rival contentions raised by the petitioner and respondents 5 to 8 on the disqualification in terms of the guidelines dated 18.05.2004 are left open to be raised before the 2<sup>nd</sup> respondent Commissioner at the appropriate stage.

Sd/-

**ANIL K. NARENDRAN, JUDGE**

Sd/-

**HARISANKAR V. MENON, JUDGE**

bkn/AV

The 'Section 9' mentioned in lines 1, 2, 7 and 13 of paragraph 31 at page Nos.24 and 25 of the judgment dated 18.04.2024 in W.P.(C)No.38468/2023 is corrected and substituted with 'Section 28' as per the order dated 16.10.2024 in W.P.(C)No.38468/2023.

Sd/-

JOINT REGISTRAR

APPENDIX OF WP(C) 38468/2023

## PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF NOTIFICATION NO. J7/2319/2019/MDB DATED 19-1-2022,
Exhibit P2	TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED NIL,
Exhibit P3	TRUE COPY OF THE APPLICATION SUBMITTED BY THE 5TH RESPONDENT DATED 10/02/2022
Exhibit P4	TRUE COPY OF THE APPLICATION SUBMITTED BY THE 6TH RESPONDENT DATED 09/02/2022
Exhibit P5	TRUE COPY OF THE FACEBOOK POST OF THE 6TH RESPONDENT DILEEPKUMAR
Exhibit P6	TRUE COPY OF THE INTERIM ORDER IN WP(C) NO. 8226/2022 DATED 18/08/2023
Exhibit P7	TRUE COPY OF THE JUDGMENT IN WP(C) NO. 8226/2022 DATED 29/09/2023
Exhibit P8	TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 25/10/2023, NO. J7/2319/2019/M.D.B(KDIS)
Exhibit P9	TRUE COPY OF THE FACEBOOK POSTS IN RESPECT OF THE 8TH RESPONDENT

## RESPONDENT EXHIBITS

Exhibit R4(a)	True copy of the complaint of the temple employees against the 7th respondent dated 01.11.2023, which was been forwarded by me on 05.11.23 to the 2nd respondent
Exhibit R4(b)	True copy of the complaint of the Executive Officer, who is the Secretary of the Trustee Board dated 10.11.2023 addressed to the 2nd respondent
Exhibit R6(D)	A true copy of the photograph of the petitioner on the stage of INTUC Convention on 3.11.2023

- Exhibit R6(A) True copy of a news that appeared on the online media called Athavanad Media on 19.09.2021
- Exhibit R6(B) A true copy of the Facebook post by Mr. Abraham Robin D Daniel dated 15.10.2020 containing a poster purported to be published by the KPSTA (Kerala Private School Teachers Association)
- Exhibit R6(C) A true copy of the photograph of the petitioner attending the function of Thalakkad INTUC Convention, on 23-09-2023
- EXT.R7(a) TRUE COPY OF THE COMPLAINT DATED 08/12/2023 SUBMITTED BY THE EMPLOYEE OF THE TEMPLE BEFORE THE 2ND RESPONDENT
- Exhibit R8(a) True copy of the poster published by KPSTA, Tirur Sub-District Committee to praise the petitioner
- Exhibit R8(b) True copy of the Facebook particulars published by the petitioner himself
- Exhibit R8(c) Photograph taken on 03.11.2023, with the petitioner
- Exhibit R7(b) TRUE COPY OF THE ABOVE LETTER, RECEIVED UNDER RIGHT TO INFORMATION DATED 21/10/2021
- Exhibit R8(d) A true copy of the guideline dated 18.05.2004 issued by the 2nd Respondent