

(2009) 03 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No. 1558 of 2005

A. Venkatesan

APPELLANT

Vs

The Joint Commissioner, HR and CE (Administration) and P.
Paranthama Kannan

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 53(1),
53(4), 6, 63

Citation : (2009) 03 MAD CK 0054

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

**Advocate : W.C. Thiruvengadam, for the Appellant; T. Chandrasekaran and G.
Sugumaran, for the Respondent**

Final Decision : Allowed

Judgement

K.N. Basha, J.—The challenge in this Writ Petition is to the Communication dated 6.1.2005 issued by the second respondent, namely, the

Fit Person/Executive Officer, Sri Amirthakandeewarar Temple, Jeenur Village, Krishnagiri Taluk and District demanding the possession of the

temple and its properties to be handed over to him with immediate effect from the petitioner herein with a prayer to quash the said Communication.

2. The petitioner herein is the Hereditary Trustee-cum-Poojari in Sri Amirthakandeewarar temple situated in Jeenur Village, Krishnagiri Taluk and

District within the meaning of Section 6(ii) and 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter

referred to as "the Act"). It is stated that the paternal uncle of the petitioner, namely, one C. Rajagopala Asari was also holding the said office of

Hereditary Trustee along with the petitioner in the aforesaid temple and he died

without issues and as such, it is claimed by the petitioner that he is the present Hereditary Trustee-cum-Poojari of the temple in question. The petitioner further stated that he is in actual possession of the temple and he is performing the daily poojas in the temple continuously till date.

3. It is stated by the petitioner that in the year 1984, the then Deputy Commissioner, HR & CE (Administration), Coimbatore initiated disciplinary proceedings against the petitioner u/s 53(1) of the Act in his Proceedings No. Na.Ka.63/84/B1. dated 16.4.1984 and an interim suspension order

was issued against the petitioner as well as against his paternal uncle. It is also submitted that the said order of interim suspension was challenged

by the petitioner and his paternal uncle by filing a Writ Petition in W.P. No. 5474/1984 on the file of this Court and initially, an order of interim stay

was granted for a period of three weeks and ultimately, the said Writ Petition was dismissed by this Court with a direction to place all the materials

relating to the question of law before the Enquiry Officer. It is further submitted that even after the said order of this Court, the petitioner continued

as the Hereditary Trustee-cum-Poojari of the said temple. It is also submitted that the second respondent was appointed as a Fit person u/s 53(4)

of the Act and the said fit person did not disturb the possession and administration of the temple by the petitioner herein as Hereditary Trustee-

cum-Poojari. It is submitted that the first respondent after the dismissal of the Writ Petition filed by the petitioner not issued or served any

communication to the petitioner in respect of the disciplinary proceedings and as such the said proceedings deemed to have been abandoned as no

enquiry was conducted in this matter. It is further submitted that after a lapse of more than 20 years, suddenly the petitioner has been served with

the impugned communication dated 6.1.2005 sent by the 2nd respondent herein demanding the possession and the properties of the temple from

the petitioner.

4. W.C. Thiruvengadam, learned Counsel for the petitioner vehemently contended that the disciplinary proceedings against the petitioner was

initiated as early as in the year 1984 and an interim suspension order was passed by order dated 16.04.1984 and such order was challenged by

the petitioner in W.P. No. 5474 of 1994 on the file of this Court and this Court dismissed the said writ petition and gave liberty to the petitioner to

raise all the points before the Enquiry Officer. But thereafter, there is absolutely no communication whatsoever from the first respondent in respect

of the said disciplinary proceedings and as such in view of lapse of more than 20 years, the said proceedings deemed to have been dropped. The

learned Counsel for the petitioner in support of his contention placed reliance on the decision of this Court in E.S. Athithyaraman Vs. The

Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras, .

5. The learned Counsel would further contend that in view of the disciplinary proceedings initiated against the petitioner in the year 1984 was not

proceeded further till date, the said proceedings deemed to have been dropped in law. The impugned communication dated 06.01.2005 based on

the said initiation of the disciplinary proceedings is liable to be quashed. The learned Counsel for the petitioner would also contend that the first

respondent has no right to demand the petitioner herein through the impugned communication to handover the possession and properties of the

temple by placing reliance on the disciplinary proceedings which is deemed to have been dropped, as stated earlier.

6. Heard the learned Counsels appearing for the respondents 1 and 2. It is contended by both the learned Counsels appearing for R1 and R2 that

the authorities concerned are entitled to initiate fresh proceedings on the basis of the earlier suspension order.

7. I have carefully considered the submissions put forth by the learned Counsel appearing for the petitioner as well as the learned Counsels

appearing for R1 and R2 and also perused the entire materials available on record including the impugned communication dated 6.1.2005 issued

by the second respondent to the petitioner herein.

8. The undisputed fact remains that the petitioner herein is a Hereditary Trustee-cum-Poojari of the temple by name Sri Amirthakndeeswarar

Temple, Jeenur Village, Krishnagiri Taluk and District. It is seen that a disciplinary proceeding was initiated against the petitioner and his paternal

uncle as early as in the year 1984 and an order of interim suspension was passed against the petitioner and his paternal uncle, namely, C.

Rajagopala Asari and both of them challenged the said interim suspension order by filing a Writ Petition in W.P. No. 5474/1984 before this Court

and the same was dismissed on 26.3.1993 with a liberty to the petitioner to raise all the legal points before the Enquiry Officer. It is curious to note

that in spite of dismissal of the Writ Petition filed by the petitioner herein, the first respondent has not continued the disciplinary proceedings

initiated in the year 1984 and the petitioner uninterruptly continued to be the Hereditary Trustee-cum-Poojari for more than two decades.

Suddenly, the impugned communication dated 6.1.2005 was issued by the second respondent, who is said to be the Fit Person/Executive Officer

of the said temple, to the petitioner herein demanding him to hand over the possession of the temple as well as its properties. It is pertinent to note

that the said impugned communication dated 6.1.2005 was issued by the second respondent mainly placing reliance on the disciplinary

proceedings initiated against the petitioner in Na Ka. No. 63/84/B1 dated 16.04.1984 by the Deputy Commissioner, HR & CE (Administration),

Coimbatore on the ground of passing an interim order of suspension. Admittedly, the impugned communication dated 06.01.2005 was issued after

an inordinate and unexplained delay of more than 20 years after the initiation of the disciplinary proceedings as stated above against the petitioner.

There is absolutely no material available on record to show that pursuant to the issuance of the interim suspension order dated 16.4.1984 in

Na.Ka. No. 63/84/B1, no further proceedings conducted by holding enquiry. Therefore due to the lapse of more than 20 years coupled with no

explanation was given by the first respondent, this Court has no hesitation to come to the irresistible conclusion to the effect that the disciplinary

proceedings initiated against the petitioner as early as in the year 1984 must be deemed to have been dropped in law.

10. The learned Counsel appearing for the petitioner rightly placed reliance on a decision of this Court in E.S. Athithyaraman v. The

Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras AIR 1971 Madras 170 and in that decision,

this Court held that

The failure to hold actual enquiry orders regarding delinquent's promotion and long lapse of period in passing final order, were circumstances from

which reasonable inference could be drawn that delinquent's explanation was accepted and proceedings were dropped. The order of reversion, in

the circumstances, could not be sustained.

Further, in that decision, His Lordship Honourable Mr. Justice Ismail (as he then was) ultimately held as here under:

...Therefore, I am satisfied that, with reference to the facts and circumstances of this case, the petitioner is entitled to contend that his explanation

dated 14.12.1961 must be deemed to have been accepted by the Department and the proceedings against the petitioner must be deemed to have

been dropped and therefore, there was no justification thereafter to revive the same and pass the impugned order after such a long lapse of time.

The above said principles of law laid down by this Court in the decision squarely applicable to the case on hand as in this case also, the disciplinary

proceedings initiated against the petitioner as early as in the year 1984 was not pursued further and admittedly, no enquiry whatsoever has been

conducted by the authorities concerned and as such, the disciplinary proceedings must be deemed to have been dropped. Therefore, this Court

has no hesitation to hold that there is absolutely no justification for the second respondent herein, namely, fit person/Executive Officer to issue the

impugned communication after the inordinate and unexplained delay of more than two decades by placing reliance on the interim suspension order

passed against the petitioner in the year 1984 by initiating disciplinary proceedings and the said proceedings as held by this Court deemed to have

been dropped.

For the foregoing reasons, this writ petition is allowed and the impugned communication issued under Na.Ka. No. 63/84/B1 dated 16.04.1984 by

the Deputy Commissioner, HR & CE (Administration), Coimbatore is hereby quashed. No costs.