

(2004) 07 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No's. 15468 and 15469 of 2003

Arulmighu Karaneeswarar Temple

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 25, 26

Citation : (2004) 07 MAD CK 0032

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : R. Gandhi, for R.G. Narendhiran, for the Appellant; G. Sukumaran, Special Govt. Pleader (HR and CE) for Respondents 1-3 and Sriram, for Kailasam Associates for Respondent-4, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—Both the writ petitions were heard together and have been disposed of by this common judgment.

2. In these two writ petitions prayer is to issue writ of Certiorari for quashing the order dated 16.5.2003 in G.O.(ID) No. 105 issued by the first

respondent and the consequential order dated 20.5.2003 in Na.Ka. No. 14182/98 passed by the second respondent.

3. Under the first impugned order dated 16.5.2003, the first respondent, namely the State Government has rejected the appeal filed on behalf of

the present petitioners against the order passed by the second respondent directing appointment of an Executive Officer for Arulmighu

Karaneeswarar Temple (hereinafter referred to as ""the temple"") at Saidapet and under the latter order, the Government accepted the proposal

made by the Special Commissioner, Hindu Religious and Charitable Endowment

Department for appointment of Assistant Commissioner, HR & CE Department as ""Takkar"" (fit person) for the aforesaid temple.

4. The petitioners' case is as follows :-

The temple had been founded by Saiva Senguntha Community of Thirukkaranaï Village long back. The administration of the temple and the

properties were being managed by the Executive Trustees elected from among the Karani Saiva Senguntha Community of the said village

consisting of 6 streets at Saidapet. While the matter stood thus, a Scheme was framed by the Civil Court in O.S.No.43 of 1919. The Scheme

provides for election of Executive Trustees from Karani Saiva Senguntha Community. The rules for holding election had been framed in M.P.No.1

of 1924 by the Sub Court, Chengleput. As per the said Scheme and the election rules, the Executive Trustees were being periodically elected. The

Commissioner of HR & CE had initiated proposal for appointing Trustees under the Hindu Religious and Charitable Endowment Act (Act 19 of

1951), but at that stage, the Executive Trustees filed O.S.No.272 of 1960 seeking necessary declaration which was dismissed for want of notice

u/s 80 CPC. In appeal, the Principal Judge observed that the disputed temple was a denominational temple and the Endowment Department had

no power to appoint trustees. However, the appeal was dismissed on the technical ground of non-compliance with the provisions contained in

Section 80 CPC. S.A.No.364 of 1964 was also dismissed. After coming into force of the Hindu Religious and Charitable Endowment Act (Act

22 of 1959), the Commissioner again initiated proceedings to modify the Scheme. At that stage, the Executive Trustees had filed proceedings on

the ground that the temple was a religious denominational temple founded by Saiva Senguntha Community of Tirukkarani Village and as per the

provisions contained in Section 107 of the HR & CE Act, 1959, such temple was beyond the purview of such Act. However, since the

Endowment authorities were not prepared to accept such a contention, the Executive Trustees filed O.S. No. 6784 of 1971 in the City Civil Court

for a declaration that Arulmigu Karaneeswarar Temple is a religious denominational temple belonging to Saiva Senguntha Community and

members of such community are entitled to conduct the affairs of the temple without interference of the Endowment Department. It is alleged that

such suit was decreed on 3.3.1974 and no further appeal had been preferred by the Endowment Department.

While the matter stood thus, the Joint Commissioner issued notice purporting to be u/s 64(5) (a) & (b) of HR & CE Act, 1959 to modify the

Scheme settled by the Civil Court in O.S. No. 43 of 1919 and also to cancel or modify the rules framed as per the order dated 23.4.1924 in M.P.

No. 1 of 1924 arising from the very same suit. Such suo motu proceedings before the Joint Commissioner was numbered as O.A. No. 20/98/B1.

At that stage, the petitioners had filed W.P. No. 1495 of 1999 challenging such proceedings. It is claimed in the present writ petitions that such

W.P. No. 1495 of 1999 is still pending. However, it has been controverted by the respondents who have stated that subsequently such writ

petition has been dismissed. While O.A.No.20 of 1998 was pending, the Commissioner initiated proceedings u/s 45 of the HR & CE Act for

appointment of Executive Officer. In O.A. No. 20 of 1998, the Joint Commissioner formulated a draft Scheme by order dated 29.8.2001. The

petitioners had filed A.P. No. 29 of 2001 before the Special Commissioner, HR & CE Department (Respondent No. 2). The matter was

remanded for fresh disposal. It is contended by the petitioners that in all the previous proceedings it is not disputed that the temple is a

denominational temple. In the proceedings taken u/s 45 of the Act, objections have been filed on behalf of the present petitioners. The present

second respondent directed the Joint Commissioner to enquire into the matter and on the basis of the report furnished by the Joint Commissioner,

the second respondent passed order in proceedings Rc. No. 100869/2000/1/L.5 dated 19.12.2001 directing appointment of an Executive Officer

for the temple. The petitioners preferred a Revision Petition before the first respondent and since no interim stay has been granted at that stage, the

petitioners filed W.P. No. 1 of 2002 which was disposed of by this Court on 28.1.2002 by directing the first respondent to consider the stay

petition. Thereafter the Government passed an order of stay. Subsequently, however, such revision has been rejected, which is one of the orders

challenged in these writ petitions.

It is further claimed that one Amirthalinga Mudaliar is in occupation of some properties belonging to temple. Even though a paltry sum is payable,

Amirthalinga Mudaliar is not regularly paying the rent and certain amount fell due. The petitioners demanded such amount and a suit has been filed

for eviction of such person, who in turn has filed O.S.No.6607 of 2001 and obtained an order of injunction restraining the petitioners from

conducting any election. It is claimed that only after the order of injunction was vacated in July, 2002, election was conducted on 27.10.2002 and

the present Trustees have been elected. However, the second respondent has illegally passed an order on the basis of a letter sent by the aforesaid

Amirthalinga Mudaliar directing the Joint Commissioner to enquire into the matter and further directing the newly elected trustees not to take any

decisions relating to administration of the temple and not to open the Hundi. The petitioners have filed W.P. No. 45403 of 2002, which is pending

before the High Court. It is claimed that inspite of the interim order of stay in the aforesaid writ petition, thus permitting the petitioners to function as

Executive Trustees in the administration of temple, the first respondent under the impugned order dated 16.5.2003 has rejected the Revision thus

confirming the order dated 19.12.2001 passed by the Endowment Commissioner. Thereafter the third respondent has been appointed as Takkar

and fourth respondent has been appointed as Executive Officer. The appointment of respondents 3 and 4 are being challenged.

5. The main contention raised in these writ petitions is to the effect that the temple being a denominational temple, endowment authorities have no

right to interfere with the administration of such temple. It is further contended that the Endowment Commissioner had mechanically passed order

in respect of appointment of the Executive Officer without considering the facts and circumstances. It is also claimed that there is no jurisdiction to

appoint a "fit person" as the temple is a denominational temple.

6. Separate counter affidavits have been filed on behalf of respondents 2 and 4. The second respondent in his counter affidavit has indicated that

the Scheme of administration framed in O.S. No. 43 of 1919 is in law deemed to have been settled under Act 22/1959. It has been indicated that

election had not been conducted within the stipulated period as the period of previous trustees has ended in November, 2001, but the election was

held on 27.10.2002. Moreover, before holding the election, trustees should have obtained permission from the Scheme Court for appointment of

Election Officer to hold the election. Since the election had not been held in accordance with the Scheme and the relevant provisions, the persons elected from such election are not competent to represent the temple or to manage such temple. With reference to O.S.No.6784 of 1971, it is stated that such a suit was a suit u/s 70 of the HR & CE Act and declaration that the temple is a denominational temple did not arise at all and there was no such declaration. In view of the irregularities committed, show cause notice has been issued and the previous trustees have submitted their explanation. After considering the matter in its proper perspective, the Commissioner thought it fit to appoint an Executive Officer u/s 45(1) of the Act. It is further indicated that the respondent No.1 on consideration had rightly rejected the Revision Petition. The election having been held against the Scheme decree without following the proper procedure contemplated, the Executive Trustees elected as per such illegal election did not have any right.

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

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

9. The main contention of the petitioners is to the effect that the temple being a denominational temple, the authorities under the Act have no right to interfere. For the purpose of deciding the present case. It is not necessary to

consider this aspect. Even assuming that it is a denominational temple, the question to be considered is whether the Endowment Commissioner has jurisdiction to appoint an Executive Officer.

10. In *Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another*, , while referring to an earlier decision reported in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , it was observed :

. . . In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , this Court held at

page 1029 (of SCR) : (at P.291 of AIR) that a law which takes away the right to administration to the religious denomination altogether and vests

it in any other authority would amount to a violation of the right guaranteed under clause (d) of Article 26. So a law would not totally divest the

administration of a religious institution or endowment, but the State has general right to regulate the right to administration of a religious or charitable

institution or endowment; and such a law may choose to impose such restrictions whereof as are felt most acute and provide a remedy therefor.

11. The aforesaid decision was subsequently followed by three Judges Bench of the Supreme Court reported in *Sri Adi Visheshwara of Kashi*

Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others, and it was observed :

33. Thus, it could be seen that every Hindu whether a believer of Shaiva form of worship or of panchratna form of worship, has a right of entry

into the Hindu Temple and worship the deity. Therefore, the Hindu believers of Shaiva form of worship are not denominational worshippers. They

are part of the Hindu religious form of worship. The Act protects the right to perform worship, rituals or ceremonies in accordance with established

customs and practices. Every Hindu has right to enter the Temple, touch the Linga of Lord Sri Vishwanath and himself perform the pooja. The

State is required under the Act to protect the religious practices of the Hindu form of worship of Lord Vishwanath, be it in any form, in accordance

with Hindu Shastras, the customs or usages obtained in the Temple. It is not restricted to any particular denomination or sect. Believers of Shaiva

form of worship are not a denominational sect or a section of Hindus but they are Hindus as such. They are entitled to the protection under Articles

25 and 26 of the Constitution. However, they are not entitled to the protection, in particular, of clauses (b) and (d) of Article 26 as a religious

denomination in the matter of management, administration and governance of the temples under the Act. The Act, therefore, is not ultra vires

Articles 25 and 26 of the Constitution.

34. It is then contended that abolition of the right to manage the Temple as Mahant is offensive of their right to religious practice and management

of the Temple. This controversy is no longer res integra. This Court in Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and

another, , was to decide the validity of the provisions of the A.P. Act in the matter of abolishing the right of hereditary trustees and appointment of

the Executive Officer and non-hereditary trustee. In Sri Sri Sri Lakshamana Yatendrulu and Others etc. etc. Vs. State of Andhra Pradesh and

Another, , this Court was to decide the constitutionality of Sections 50 to 55 of the said A.P. Act dealing with action against erring Mathadhipati,

maintenance of accounts and removal of Mathadhipati for misconduct and filling up of the resultant vacancies. After elaborate consideration, the

provisions were upheld as valid and constitutional. Diverse provisions of the A.P. Act, 1987 were upheld. We need not reiterate them once over

and to avoid burdening the judgment, we adopt the reasons given therein and agree with the same. For the same reasons, the need to examine in

detail aforequoted provisions is obviated. Accordingly, we hold that the contention that some of the persons have customary and hereditary rights

as archakas and that the Act extinguishes their rights and so is violative of Articles 25 and 26(b) and (d) of the Constitution, is untenable and

devoid of substance.

35. Obviously, therefore, it was contended that in the constitution of the committees or the Board of Trustees the appellants are entitled to be

nominated as members of the Board. The absence of any provision in the Act in that behalf is violative of their right to be members of the Board.

The learned Judges of the High Court observed the need to consider their representation. Shri Javali, learned Senior Counsel, sought support in

that behalf from Pannalal case and was adopted by Shri Dhavan. The A.OP. Act relates to abolition of hereditary right of the founders of the

religious institution or endowment or the Board of Trustees. That Act was based

upon the Report of Justice Kondiah Commission and has abolished those rights. While the validity of the provisions was upheld, the provisions were read down to indicate that all hereditary trustees need not be painted with the same brush as having committed misconduct or mismanaged the institution or endowment. In Pannalal case this Court examined the question in detail and held that if in an individual case a hereditary trustee incurs any disqualification, an enquiry may be conducted and one of the members of the family of the founder may be appointed as a hereditary trustee along with non-hereditary trustees and as a Chairperson of the Board of Trustees so that the institution would be properly maintained and rituals and ceremonies conducted as per the custom, usage and practice. In the present case, the Act relates to the individual institution, namely, Sri Kashi Vishwanath Temple at Varanasi with particular reference to the mismanagement etc. by the selfsame persons. The Committee appointed by the Government had gone into and found the need for the legislative interference. As a consequence, it would be difficult to read down Section 6 to give any direction to nominate the members of the family or some of the appellants as members of the Board. On the other hand, sub-sections (2)(k) and (2)(l) of Section 6 deal with nomination of eminent Hindu scholars or local eminent persons having good knowledge and experience in the management and administration of the affairs of the Temple and in worship, service, rituals or observance, these persons are therein, made eligible. It is for the appropriate Government to consider whether or not any of them would be eligible to be considered for nomination as one of the eight non-official members of the Board at the relevant time.

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

jurisdiction or arbitrary.

13. The matter can be viewed from another angle. The fact remains that the Scheme has been modified. It is no doubt that it is open to the party

aggrieved to challenge the modification of the Scheme according to law. Until the modification is subsequently challenged, as per the modified

Scheme, the Executive Officer can be appointed. In the present case, such Executive Officer having been appointed, it would not be proper to

interfere with such order.

14. Learned counsel for the petitioners has also challenged the appointment of "fit person". For the very same reasons, the appointment of fourth

respondent as fit person is not open to be challenged.

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