(1996) 04 MAD CK 0001

In the Madras High Court

A.S. Sethurathinammal APPELLANT

Vs

The Deputy Commissioner, H.R. and C.E. RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 33, 33(3), 90

Citation : (1996) 2 LW 131 : (1996) 2 MLJ 385

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—The objection taken by the writ petitioner against the notice issued by the respondent u/s 33(3) of the Tamil Nadu Hindu

Religious and Charitable Endowments Act, 1959 is well founded. It is not necessary for me to go into the factual allegations and counter

allegations.

2. Notice issued by the respondent to the petitioner reads as follows:

Whereas the Deputy Commissioner, Madras, on consideration of the report of the Inspector has reason to believe that Tmt. Scthurathinammal,

person in management of the above temple, has acted adverse to the interest of the institution by investing the savings to the tune of Rs. 26,05,400

of the temple in the banks other than co-operative banks contrary to the instruction contained in G.O.Ms. No. 728 dated 14.8.1980, thus incurred

1/2% loss of interest which works out at the rate of Rs. 4,390 per year. Notice is hereby given to Thirumathi Sethurathinam Ammal to show cause

in writing on or before 27.4.1983 why an order of surcharge u/s 33(3) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) should not be passed against her for the recovery of the amounts involved.

An enquiry into the objections, if any, will be held by the Deputy Commissioner at this Office at Madras-34 at 11.00 a.m. on 27.4.1983.

In the absence of any objection within the time specified order will be passed on the materials available.

3. A perusal of the said notice shows that the allegation made against the petitioner is that she failed to deposit the temple funds in co-operative

banks and deposited the same in some other banks, thus causing a loss of 1/2% interest every year, amounting to Rs. 4,390. It is also stated that

her action is contrary to the instructions contained in G.O.Ms. No. 728, dated 14.8.1980.

4. The objection raised by the petitioner is that no notice can be issued u/s 33(3) of the Act on the ground alleged in the notice and no enquiry can

be held on that footing. It is pointed out that Section 33(3) would apply only to cases of misappropriation or fraudulent retention of money or

irregular and improper expenditure and not to cases in which the temple is put to a loss on account of failure to deposit in Co-operative Banks.

5. Sub-section (3) of Section 33 reads as follows:

Where in the course of such inspection, it appears that the trustee of the institution concerned, or any of the officers or servants working under him,

his agent or any other person having concern in the administration of the institution, past or present, has misappropriated or fraudulently retained

any money or other property or incurred, irregular, illegal or improper expenditure, the Temple Administration Board may, after giving notice to the

trustee or person concerned to show cause why, an order to surcharge should not be passed against him and after considering his explanation, if

any, by order, certify the amount as lost and direct the trustee or such person to pay within a specified time such amount personally and not from

the funds of the institution.

The procedure laid down in Sub-sections (3) to (7) of Section 90 shall apply to the recovery of the amount of surcharge.

In contra-distinction, my attention is drawn to Section 90 of the Act wherein Sub-section (2) provides for a similar situation but arising on a

consideration of the audit report. That sub-section reads as follows:

If on a consideration of the audit report and the report of the trustee and after

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such inquiry as may be necessary, the Temple Administration Board

or District Committee, as the case may be, thinks that the trustee or any other person was guilty or irregular, illegal or improper expenditure, or of

loss or waste of money or other property thereon caused by failure to recover money due or other property belonging to the religious institution or

by neglect or misconduct or misapplication or collusion or fraudulent transactions or breach of trust, the Temple Administration Board, or District

Committee as the case may be, after giving notice to the trustee or such person to show cause why an order of surcharge should not be passed

against him and after considering his explanation, if any, by order certify the amount so spent or the amount or value of the property so lost or

wasted, and direct the trustee or such person to pay within a specified time such amount or value personally: Provided that if, in respect of any

expenditure or dealing with the property of the institution, the trustee or such person has obtained the directions of the Temple Administration

Board or District Committee, as the case may be and has acted in accordance with such directions, he shall not be held liable.

6. It is seen from the language of the two sub-sections that Sub-section (2) of Section 90 is of wider scope. It covers not only irregular, illegal or

improper expenditure, but also loss or waste of money or other property thereof caused by failing to recover moneys due or other property

belonging to the religious institution or by neglect or misconduct or misapplication or collusion or fraudulent transactions or breach of trust. Thus,

Section 90 will cover a large number of cases including the failure of a trustee to carry out particular duty enjoined on him or her by the Act, Rules

or Government notifications. But Section 90 will not apply in this case as the temple accounts have not yet been audited. An action can be taken

under that section only after an audit is conducted. In this case, admittedly the irregularity was found out only on inspection and, therefore, the

notice is issued u/s 33. But the language of Section 33(3) will not cover a case of failure on the part of the trustee to invest money in the banks

specified by the Government thereby incurring a loss of interest to the temple.

7. The contention of the writ petitioner is, therefore, accepted and the notice dated 31.3.1993 issued by the respondent is quashed. The writ

petition is allowed. But, there will be no order as to costs.

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8. It is, however, open to the respondent to take such other action as may be available under the law as against the petitioner for her failure to

deposit the temple money in the Co-operative Banks.

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