
(2000) 01 MAD CK 0020

In the Madras High Court

Case No : Writ Appeal No. 2662 of 1999 and C.M.P. No. 22373 of 1999

Assistant Commissioner Executive Officer, Arulmigu Vana
Badrakaliamman Temple

APPELLANT

Vs

T. Kumaresan and Others

RESPONDENT

Date of Decision : 12-01-2000

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 21, 55, 55(1)

Citation : (2000) 01 MAD CK 0020

Hon'ble Judges : K.G. Balakrishnan, C.J;K. Govindarajan, J

Bench : Division Bench

Advocate : R. Krishnamoorthy for R. Muthukumaraswamy, for the Appellant; T.L. Ram Mohan for S. Subbiah, for R1, R. Balasubramanian, Spl. Govt. Pleader, for R2 and W.C. Thiruvankadam, for R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—The Appellant/Executive Officer, Arulmigu Vana Badrakaliamman Temple, Thekkampatti, has filed the above Writ

Appeal, aggrieved by the order of the learned Judge passed in W.P. No. 19988 of 1998, dated 31.8.1999.

2. The third Respondent is the hereditary trustee of the said temple. With a view to fill up the permanent vacancy of Poosari of the said temple,

made publication in the newspaper "Dhina Thanthi", Coimbatore Edition, dated 21.11.1997, calling for applications for six vacancies in the said

temple including the said vacancy for the post of Poosari. The Writ Petitioner made an application for appointment of Poosari for the said temple.

Interview was conducted on 13.5.1998. After considering the merits of all the candidates who attended the interview, the trustee passed resolution

on 19.5.1998 selecting the Writ Petitioner for that post. But the third Respondent did not issue the appointment order on account of the objections

raised by the second Respondent, as the Writ Petitioner is not qualified to be appointed to the post of Poosari. It seems that the third Respondent

by his letter dated 21.10.1998 sought for permission from the second Respondent to appoint the Writ Petitioner as Poosari. The second

Respondent was not inclined to approve the appointment. In the letter dated 17.11.1998, the second Respondent denied such permission, on the

basis of the circulars issued by him dated 22.5.1992 and 16.6.1993. So, the Writ Petitioner filed the Writ Petition in W.P. No. 19988 of 1998,

challenging the legality of the said letter dated 17.11.1998 sent by the Second Respondent-commissioner. The learned Judge after elaborately

considering the issues raised before him held that the said letter dated 17.11.1998 cannot be sustained, and quashed the same, and also directed

the third Respondent to appoint the Writ Petitioner as an Archaka within one month from the date of the order.

3. We heard the arguments advanced by Mr. R. Krishnamoorthy, learned Senior Counsel appearing for the Appellant.

4. The learned Senior Counsel appearing for the Appellant has submitted that qualifications have been prescribed by the second Respondent-

commissioner in the circulars dated 22.5.1992 and 16.6.1993 for filling up the vacancies in the said temple. The appointment of the first

Respondent/Writ Petitioner as a Poosari cannot be sustained, as he is disqualified to be appointed for such post, and he has filed cases against the

said temple which are admittedly pending. The learned senior counsel, referring to Section 21 of the Tamil Nadu Hindu Religious and Charitable

Endowments Act, 1959 has submitted that the Commissioner is empowered to call for records and examine the same with respect to any

proceedings of the trustee of a religious institution, to satisfy himself as to the correctness or legality of such proceedings, or an order passed

therein. As such power is available to the Commissioner, the order passed, which is impugned in the Writ Petition, is within the jurisdiction of the

second Respondent-Commissioner and so it cannot be held as invalid.

5. u/s 55 of the said Act, vacancies whether permanent or temporary among the office-holders or servants of a religious institution shall be filled up

by the trustees in all cases. Explanation to Sub-section (1) of Section 55 says that "Office-holders or servants" shall include archakas and pujaris.

Exercising this provision, the third Respondent herein selected the first Respondent herein as a Poosari by way of selection. But the third

Respondent could not appoint the first Respondent as Poosari in view of the impugned order of the Commissioner dated 17.11.1998. In the said

proceedings, it is stated that any appointment should be made only after getting prior approval from the Commissioner as stated in the circulars

dated 22.5.1992 and 16.6.1993. It is also specifically stated that such power to approve the appointment is available only to the Commissioner,

and the trustee cannot appoint, by himself, any Poosari. To sustain this order, the learned Senior Counsel appearing for the Appellant has

submitted that to vouch whether the trustees has appointed a person with any disqualification or not suffered from any disqualification, such prior

approval is necessary and so the Commissioner is correct in saying that the trustee cannot make appointment order by himself without getting prior

approval of the Commissioner, in the interest of the institution. We are not able to accept the said submission.

6. When power is given to the trustees to appoint office-holders and servants in religious institutions u/s 55 of the said Act, such power cannot be

taken away by administrative orders. Asking the trustees to get prior approval to appoint a servant as stated in the impugned order is contrary to

the said specific provision. Further, any order passed u/s 55 of the said Act can be challenged by way of Appeal before the Deputy

Commissioner. If the intention of the statute is such that the trustee has to get prior approval before making appointment, in other words, if the

appointment should be made only after getting prior approval of the Commissioner, the Deputy Commissioner should not have been given power

to entertain appeals against the said orders. So a plain reading of Section 55 of the said Act clearly establishes that trustees have power to appoint

such officer-holders, and, in the absence of any such restriction to get prior approval from the Commissioner to exercise the statutory function,

insisting such approval by administrative order cannot be sustained.

7. Even if trustees appoint disqualified persons or the persons who should not have been appointed, the Commissioner can always exercise his

powers u/s 21 of the said Act to set aside such illegal orders. When the statute prescribes such a procedure for appointment and rectification of the

illegal orders if any, the Commissioner by way of administrative orders cannot insist the trustees to get prior approval before making appointment.

So, the learned Judge is correct in holding that the impugned order dated 17.11.1998 cannot be sustained in law. The learned Judge has also relied

on the order of J. Kanakaraj, J. as he then was, in W.P. No. 2967 to 2972 of 1996 dated 21.8.1996, in K.S. Rajashanmugavel, Sri Mariammal

Temple, Samayapuram and Ors. v. The Commissioner, H.R. and C.E

8. As stated above, as the Commissioner is given power, to set aside any illegal orders passed by the trustees, u/s 21 of the said Act, if the

Commissioner feels that any order of the third Respondent-trustee is contrary to law and against the interest of the religious institution, he can

always exercise his power u/s 21 of the said Act.

9. For the foregoing reasons, we do not find any error in the order of the learned Judge. Accordingly, this Writ Appeal is dismissed. No costs.

Consequently, C.M.P. No. 22373 of 1999 is also dismissed. CH/VCS.