

(1924) 08 MAD CK 0063
In the Madras High Court

(Bava C.) Vythelinga Mudaliar and Others

APPELLANT

Vs

R. Mahadeva Iyer and Others

RESPONDENT

Date of Decision : 27-08-1924

Acts Referred:

Citation : AIR 1926 Mad 659

Judgement

1. A scheme was framed to regulate the affairs of the temple known as Tiruvalur Tyagarajaswami Koil. A Board of control was constituted consisting of five members. There was a vacancy in the office of the superintendent of the temple and on 9th February 1924, the Board appointed one Swaminatha Mudaly as superintendent. One Mahadeva Iyer presented a petition to the Subordinate Judge of Tiruvalur and the relief he asked for is contained in the following paragraph:

For the above reasons I pray that this Honourable Court will be pleased to cancel the said appointment and either direct the trustees to appoint a new fit and proper person or itself appoint a fit and proper person for the said post.

2. The Subordinate Judge upon this petition made an order on 31st March 1924 from which we take the following passage:

It is, therefore, desirable not to have him any more as the temple superintendent and I would, therefore, call upon the members of the Board to remove him from that place and see that a proper man who has no such bad antecedents is appointed.

Then again,

The Board will be requested to make the appointment within 15 days from the date of receipt hereof and if no proper person is appointed by that date this Court will make the appointment, in place of the present superintendent whose appointment is not approved at all.

3. The correctness of this order has been questioned on the ground that it is one

made without jurisdiction. It is not disputed that the authority of the Court to deal with matters arising under the scheme is derived from the scheme itself and no general power of the Court outside of or independent of the scheme is relied on. Turning to the provisions of the scheme, we find nothing in them to justify the order of the Judge. Paragraph 5 of the scheme deals with the appointment of a treasurer and superintendent. It runs thus;

A treasurer shall be appointed in the first instance by the Court and shall receive a monthly salary not exceeding Rs. 150 and if any vacancy arises hereafter his successor shall be appointed by the Court. A temple superintendent shall be appointed by the Court on a salary of Rs. 50 and the subsequent vacancies may be filled up by the board, Only high caste Hindus are eligible for this appointment.

4. While the clause gives the Court the power to appoint a successor in the case of a treasurer, power of appointment in the case of a vacancy in the office of the superintendent is clearly vested in the Board. Now, turning to the order of the Subordinate Judge, he seems to think that the superintendent being a relation of one of the trustees is not qualified. Another reason given is that it is desirable to have a Brahmin as a superintendent. These expressions of view on the part of the learned Subordinate Judge derive no support from the scheme itself. They are indeed opposed to it and we are inclined to think that the Judge is under the impression that he has general power to regulate the affairs of the temple in question, which, of course, he has not and we must, therefore, set aside his order.

5. The next order which is impeached relates to the cancellation by the sub-Court of what purports to be a dismissal of the treasurer. In May 1924 three out of the five members of the Board seized all the papers and account books in the hands of the treasurer, and suspended him. On 13th May 1924 the matter having been brought to the notice of the Subordinate Judge he cancelled the order of suspension. Clause 6 of the scheme regvdates the power of the Court in this respect. It reads thus:

The Board shall have no power of suspension or dismissal of the treasurer except by a vote of majority of the members subject to confirmation by the Court.

6. The power of suspension is vested in the Board. The decision of the Board is, no doubt, subject to confirmation by the Court. Now, the three members of the board acting in their individual capacity suspended the treasurer. There was no resolution of the board placed before the Court for confirmation and the order of the Judge cancelling what purports to be the suspension of the treasurer is without jurisdiction.

7. At a meeting of the Board alleged to have been held on 14th June 1924 the treasurer was dismissed and the resolution was again placed before the Court. On the 24th July 1924 the Judge purported to cancel the order of the Board. Here again he does not appear to have properly appreciated the position. Under the scheme and the rules framed by the Court the treasurer who is the secretary

of the Board can convene a meeting or the president may convene it. As a matter to be disposed of at the meeting is the alleged misappropriation by the treasurer and as he refuses to take orders from the three members who are dissatisfied with him, it is said that the latter cannot get the treasurer to convene a meeting. As the president is siding with the treasurer it is alleged that he will not convene a meeting either. In these circumstances, the three members referred to after suspending the treasurer appointed in his place the superintendent of the temple. This course does not find sanction in the scheme. He purported to call for a meeting and it was at that meeting that the treasurer was dismissed. We are inclined to think that there was in law no meeting and no resolution. Thus the condition precedent to the exercise of its power by the Court, namely, a resolution of the Board, was wanting. The learned Judge says:

Their order cannot be approved under the circumstances and I cancel it and the treasurer will continue as the treasurer from that date pending enquiry into the charges which the Board might wish to establish against him.

8. If this implies a mandate to the Board to meet and vote on the question relating to the dismissal of the treasurer, it is obvious that the Judge has no such power and this part of the order is not justified by either party. And if this part of the order cannot be carried into effect and at the same time the order of dismissal stands cancelled, the result is that a treasurer against whom serious charges are made by a majority will be allowed to continue in office. There will then be a deadlock and this illustrates the danger of the Court intervening without strict regard to the provisions of the scheme. We think that the order of the Subordinate Judge is without jurisdiction and we, therefore, set it aside.

9. All the parties complain that there are many defects in the scheme as well as the rules, that they need revision and that these deficiencies are responsible for the present state of affairs. If this be so, the parties must be left to their proper remedies.

10. The appeals filed against the orders of the Subordinate Judge, we have treated as civil revision petitions : where revision petitions were filed it has not been necessary to resort to this procedure. Appeals were justified on the footing that the orders of the Subordinate Judge were made in execution of the scheme decree. This contention is clearly wrong and is opposed to *Ranganatha v. Krishnasivami* AIR 1924 Mad. 369 The orders of the Subordinate Judge however, being without jurisdiction, are liable to be set aside in revision and we are satisfied that a case has been made out for the exercise of our revisional powers.

11. Each party will bear his costs and none of the trustees will be permitted to make his costs from the temple funds.