

(1957) 12 MAD CK 0021
In the Madras High Court

CT.PL. Chidambaram

APPELLANT

Vs

R. Muthukumaraswami Pillai and Others

RESPONDENT

Date of Decision : 16-12-1957

Acts Referred:

Citation : (1958) 71 LW 365 : (1958) 1 MLJ 421

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Judgement

Rajagopala Ayyangar, J.—These two petitions have only this in common, namely, that they raise similar points for consideration. The facts of each case are different and have to be set out fully.

2. W.P. No. 973 of 1956. It is concerned with the Board of trustees of Sri Jambukeswaraswami temple, Tiruvanaikaval, Trichinopoly district. This temple is governed by a scheme framed by the Hindu Religious Endowments Board on 17th November, 1945. Clause (3) of that scheme stated:

The said temple and its properties shall be administered by one or more non-hereditary trustees (not exceeding three) who shall be appointed by the Board. If there is a single trustee he shall be selected from the members of the S.R.M.Ct. family of Kanadukathan in Ramnad district. Even when there are three trustees, at least one of them shall be selected from the said family.

3. The matters which give rise to this writ petition are briefly these. In pursuance of the provisions of this scheme three trustees had been appointed to the Trust Board, one of them being from S.R.M. Ct. family. The present petitioner is the son of this representative of the family. Charges of misconduct were framed against the petitioner's father and he was directed to be removed from office. This trustee filed an appeal against the order of removal and the appeal was pending on 30th April, 1956, when the Commissioner of the Religious Endowments Board passed an order whose legality is impugned in this petition. By his order he appointed three persons as trustees of this institution. It may be

mentioned that on the date of this appointment one of the trustees had ceased to hold office by efflux of time.

4. The points urged on behalf of the petitioner against the legality of this order were two : (1) that Clause (3) of the scheme provided for the maximum strength of the Trust Board to be three but this order of appointment, dated 30th April, 1956, would have meant that the Trust Board would be constituted of four members that is excluding the petitioner's father who had been removed from the office and the other trustee whose term had expired. (2) That the petitioner's father having been removed from the trusteeship, one trustee at least should have been selected from the S.R.M. Ct. family and that the appointment made ignoring this requirement of the scheme was invalid. In the counter-affidavit filed to this petition both these objections have been answered and in my opinion satisfactorily. The first objection has to be rejected because of the specific provision in Section 42 of the Madras Act XIX of 1951. This section enacts:

42. The power to appoint trustees u/s 39 (which applies to the present case)...shall be exercisable notwithstanding that the scheme, if any, settled, or deemed under this Act to-have been settled, for the institution contains provisions to the contrary "; and Section 39 runs in these terms:

39 (1) where a religious institution included in the list published u/s 38...has no hereditary trustee, the Commissioner shall constitute a Board of Trustees consisting of not. less than three and not more than five persons appointed by him.

The provision, therefore, in Clause (3) of the scheme limiting the maximum number of trustees to three stood abrogated by the conjoint operation of Sections 42 and 39. In regard to the second objection, namely, that no member of the petitioner's family had been included as one of the trustees, it is pointed out in the counter-affidavit that it was the intention of the Commissioner to constitute a board of five persons and that one place had been reserved for a member of the family and that the place had not been filled up because on the date of the impugned appointment the appeal of the petitioner's father against his removal had not been disposed of. I hold this explanation satisfactory and find that there is no ground for questioning the validity of the order of the Commissioner.

5. Mr. Srinivasan, who appeared for the newly appointed trustees and who supported the impugned order, raised two other points : (1) that the family of the petitioner had forfeited all right to have any of its members as trustee by reason of their misconduct and acts prejudicial to the interests of the temple and (2) that in any event the provision in the scheme requiring that one of the members of the Trust Board should be a member of the petitioner's family should be deemed to be abrogated by reason of the provisions in Sections 42 and 39 which conferred an unfettered discretion on the Commissioner in the matter

of the choice of proper trustees. I feel unable to accept either submission of learned Counsel.

6. In the first place, I am unable to comprehend what is meant by the misconduct of a family. The family consisted of several members, some more remotely connected than others with the petitioner and his father. If any particular member out of this group was guilty of any prejudicial act, his claims might be overruled. I do not see any basis for the theory that by reason of the misconduct on the part of a particular individual other individuals against whom nothing could be said, also fell within the prohibition.

7. I am inclined to consider that Sections 42 and 39 abrogate only the provision in regard to the number and not in regard to the qualifications to be possessed by persons to be appointed as trustees. If any particular scheme contained provisions which were found later to work to the detriment of the institution, the proper mode of removing the hardship would be, not by ignoring the provisions of the scheme but by having the scheme amended by appropriate proceedings in that behalf. There can be no doubt that at the time the scheme was framed the association of the members of any particular family with the management of the temple was conceived of, not merely as one calculated to be in satisfaction of the claims of that family, but also in the interests of the institution itself to provide for the management by a set of persons who could be expected to take more than ordinary interest in the welfare of the temple and its progress along right lines. It is for this reason that I consider that the provisions of the sort we have in Clause (3) are not to be dismissed as outmoded and inconsistent with the advance in social conscience which the country has made in recent years. I have, therefore, no hesitation in rejecting the second contention urged on behalf of the respondents. The result is that the impugned order is not shown to be invalid and therefore the petition fails and is dismissed. Rule nisi will be discharged. There will be no order as to costs. I do not think it necessary to state in full the facts arising out of W.P. 1429 of 1956. The original scheme for the administration of the affairs of Sri Ranganathaswami and Sri Gnanapureeswara temples at Thirumaikottai, Mannargudi taluk, provided for a Trust Board not exceeding three trustees. By the impugned order, this number was raised to five by appointment of other trustees. On the terms of Sections 39 and 42 to which I have adverted earlier, the order of the Commissioner would seem to be clearly within his powers. This Writ Petition also fails and is dismissed. Rule nisi is discharged. There will be no order as to costs in either petition.