
(2015) 07 KL CK 0169

In the High Court Of Kerala

Case No : W.A. No. 1512 of 2015 in W.P. (C) 33903 of 2014

Giridharan M.

APPELLANT

Vs

Malabar Devaswom Board and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Citation : (2015) 07 KL CK 0169

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : M. Ramesh Chander, Senior Advocate, Aneesh Joseph and Dennis Varghese, for the Appellant; K. Latha, Santheep Ankarath and Parthasarathy B., SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, C.J.

1. Heard the learned counsel for the appellant, learned standing counsel appearing for respondents 1 to 3 as well as the learned counsel appearing for the 5th respondent. No notice is being issued to the 4th respondent in view of the judgment which is being passed.

2. This writ appeal has been filed by the appellant against judgment dated 3rd July, 2015 in WP(C) No. 33903/2014. The learned Single Judge by the judgment dated 3rd July, 2015 dismissed the writ petition filed by the appellant. The appellant had come up in the writ petition praying for quashing Ext. P3 by which order, the Malabar Devaswom Board has appointed respondents 4 and 5 as non-hereditary trustees of the Devaswom and 5th respondent was also appointed as the Managing Trustee for a period of two years. The said order was issued by the Assistant Commissioner. Notification was issued by the Assistant Commissioner on 1/12/2012 inviting applications from persons for being appointed as non-hereditary trustees of Sree Njangattiri Bhagavathi Temple in Thrithala Village, which was followed by another notice, Ext. P2, extending the time for submitting

application. One of the disqualification which was mentioned in clause 3 was;

"3. (g) Active political worker and persons holding the official positions of political party".

3. Respondents 4 and 5 along with other persons have submitted application. Report was submitted by Inspector, Guruvayoor Division after conducting enquiry on the applications received pursuant to the notification. The above report was considered by the Area Committee and recommendation was made by the Area Committee with regard to respondents 4 and 5. The Assistant Commissioner approved the said recommendation and issued an order. Petitioner, who is the Executive Officer of the Devaswom, had submitted an application before the Commissioner, Malabar Devaswom Board through Assistant Commissioner where allegations have been made against the 5th respondent that at present he is holding the official position of Secretary of Nagalassery Mandalam Committee of Congress and thus it will be difficult for such persons to follow up the service conditions of the employees. It appears that another application was sent again alleging that 5th respondent is in the field of politics and his appointment shall not be beneficial for the smooth administration of the temple. Since no further steps were taken, the writ petition was filed seeking to quash Ext. P3.

4. Learned Single Judge by the impugned judgment has observed that petitioner, who was the Executive Officer, has no locus standi to file the writ petition. Learned Single Judge further observed that petitioner only relies on photograph produced as Ext. P9 to contend that 5th respondent is an officer bearer of a political party. Learned Single Judge opined that no reliance can be placed on such photograph and further the Board has filed a statement stating that Inspector of the Board had conducted an enquiry which revealed that the 5th respondent is not an active politician. Challenging the order of the learned Single Judge, writ appeal has been filed.

5. Learned Senior counsel for the appellant Sri. M. Ramesh Chander submits that the writ petition could not have been thrown away on the ground that petitioner had no locus standi. It is submitted that rules including the disqualification for appointment has been framed by the Commissioner himself and in the event there is breach of the said disqualification, the petitioner, being the Executive Officer, is fully entitled to bring it to the notice of the Commissioner and no action having been taken, he has every right to come to the Court to protect the interest of the temple. He further submits that certificate dated 7th February, 2015 has been issued by Assistant Commissioner where the petitioner has been authorised to take all legal actions and take proceedings before the Police Station and the Courts. He submits that out of two respondents, 4 and 5, who were selected, 4th respondent himself has made an application requesting for being relieved from the office of non-hereditary trustee and 5th respondent, who is an active politician, was not eligible as per the terms and conditions of the notice. He relies on Ext. P9 in support of his case that the 5th respondent is in active politics and has been felicitated by his supporters for him being a member of the

Mandalam Congress Committee, being appointed as the Chairman of Trustee Board.

6. Learned counsel appearing for the 5th respondent refuting the submission contended that the 5th respondent is fully eligible for holding the office of non hereditary trustee. It is submitted that Ext. P9, which is a photo of a flux board, cannot be relied upon for coming to the conclusion that 5th respondent is in active politics and an office bearer of a political party. It is submitted that enquiry was conducted where it was found that 5th respondent is not in active politics. It is further submitted that in so far as the 4th respondent is concerned, any Government employee or employee of the KSEB can very well become the non-hereditary trustee. Learned counsel for the 1st respondent Board also supported the order appointing respondents 4 and 5 and it is submitted that after obtaining the report from the Inspector, decision was taken.

7. We have considered the submission of the learned counsel for the parties and perused the records.

8. The first issue to be considered is about the locus standi of the petitioner. Petitioner is the Executive Officer of the Devaswom. Petitioner has relied on Ext. P8 certificate, which is to the following effect;

"CERTIFICATE

I hereby certify that Sree Njangattiri Bhagavathy Devaswom in Pattambi Taluk of Palakkad District is a temple of the public coming under the Malabar Devaswom Board. That the present administrator is Sri. M. Giridharan, S/o. Raman Nair, Kaivalyam House, Nellikkattil P.O., Koottanadu who is the Executive Officer; that Sri. Giridharan is the authorised person responsible for dealing with all matters of administration, financial and legal; and Executive Officer of the Devaswom will come under the definition of public servant. The signature of Sri. Giridharan is attested hereunder.

This certificate is issued only for preparation of the records for taking legal actions in the above said Devaswom and also to protect the interest of the Devaswom by preferring lawful application before the Police Station and Courts etc.

The certificate of the Assistant Commissioner, Malabar Devaswom Board No. A5/427/2015(L. Dis.) dated 21.1.2015 issued for the above purpose is hereby cancelled".

9. The petitioner's contention is that an error has been crept in the appointment of the 5th respondent, who is disqualified, which was brought to the notice of the Commissioner by the petitioner and in the event, the error or mistake is not corrected, the administration of the temple will suffer. Hence he had every right to point out the said mistake or error to the Commissioner and to the Court. He submits that in the event, the matter is not considered, the Temple shall be the sufferer and no one could point out breach of conditions or rules. A perusal of the

certificate filed as Ext. P8 indicates that Assistant Commissioner himself has authorised the petitioner as responsible for dealing with all matters of administration, financially and legally. He was also authorised to take legal action to protect the interest of the Devaswom by preferring lawful application before the Police Station and the Courts.

10. In the facts of the present case, especially in view of the certificate issued by the Assistant Commissioner, we are of the view that the writ petition ought not have been thrown out on the ground of locus standi and since the matter relates to a Devaswom, the issues ought to have been examined on merits. We, thus, proceed to examine the issues raised on merits.

11. The only issue to be decided in the writ petition is regarding the disqualification of the 5th respondent. As narrated above, the disqualification as provided in Clause (3) sub-clause (g) of the notice inviting application is that the person should not be an active political worker or holding the official positions of political party. Petitioner in the writ petition has made a specific allegation in para 5 of the writ petition that 5th respondent is an active politician and is the Secretary of the Congress-I of Nagalassery Mandalam. In para 5, following was stated;

"The appointments of these persons are contrary to the circular. Sri. Sreenath, the 5th respondent herein is the active politician and is the Secretary of the Congress-I of Nagalassery Mandalam".

12. Counter affidavit has been filed by the 5th respondent where he has stated that he is not holding any official position in any political party and working only as a Part-time teacher. Para 2 of the counter affidavit is quoted as below:

"2. It is humbly submitted that I am always devoting my life for taking care of the welfare of the Sri. Njangatiri Bagavathy Temple for long years. I am not holding any official positions in any political party and working only as a part time teacher in a nearby private school and having enough time as I am living nearby the temple. I am well trained in dance, music and temple arts and holding certificates and also one of the jury of State Youth Festival held in Calicut this year. I am professionally qualified to perform the administration of the temple".

13. There being a specific allegation in the writ petition that he is an active politician and Secretary of the Congress-I and there is no specific denial of the allegation that he is an active politician, we are of the view that it was obligatory on the part of the 5th respondent to deny the allegation in specific words and non denial of such allegation clearly indicates that the matter needs further consideration. 5th respondent may be right in his submission that Ext. P9 cannot very much be relevant to come to the conclusion that the 5th respondent is an office bearer of any party. Although a statement has been filed by the 1st respondent, the report is not brought on record. Further, it has come on record that 4th respondent, who was already recommended in pursuance of the report

and recommendation, has shown his reluctance to continue as non-hereditary trustee.

14. In view of the above, we are of the view that as far as the 5th respondent is concerned, the Assistant Commissioner may re-examine the issue and obtain such reports as may be necessary and take a fresh decision regarding the eligibility of the 5th respondent.

15. In the result, Ext. P3 order dated 2nd December, 2014 is set aside with a direction to the Assistant Commissioner to take a fresh decision regarding the eligibility of the 5th respondent and take such consequential action as may be necessary. The Assistant Commissioner shall complete the entire process within two months from today.

The appeal is allowed and the judgment of the learned Single Judge is set aside.