(2003) 02 MAD CK 0171

In the Madras High Court

Case No : Writ Petition No. 11534 of 2000 and W.M.P. No. 16527 of 2000

K. Sriniva Bhattar, K. Ragava Bhattar, K. Sampathkumar Bhattar, T.S.V. Rajam Bhattar, K. Devaraja Bhattar, S. Devaraja Bhattar, K. Narasimha Bhattar, M.K. Srinivasan, Malaimel Venkata Varadachariar, J. Rangarajan, S.V. Govindarajan, S.V. Narasimhan, M.V. Varadarajan and S. Vijayaraghavan — APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable Endowment Board and Assistant Commissioner-cum-Fit Person, Arulmigu Devarajaswami Thirukoil — RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2005) 2 LW 364

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : R. Alagar for V. Sitharanjandas, for the Appellant; G. Nandakumar, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Though the writ miscellaneous petition was listed for considering the petition filed by the respondents for vacating the interim order of stay, and since counter affidavit had been filed and the questions involved in the writ petition were one and the same, by consent of the counsel appearing for the parties, the main writ petition itself was taken up for hearing on merits and judgment was reserved. Hence, the writ petition is accordingly disposed of under the present Judgment.

2. The petitioners are archagars and sthanigars of Arulmighu Devarajaswamy Thirukoil at Kancheepuram. They have challenged the impugned order dated 30.11.1999 issued by the first respondent whereunder the first respondent has directed for introduction of entrance ticket fee in respect of several items as

indicated in the said order. The petitioners do not challenge the items 1,2 and 3 of the said order and the challenge is confined to the introduction of new entrance ticket fee.

3. For convenience, the aforesaid portion of the order is extracted hereunder:

"Introduction of new entrance ticket fee

- S. No. Particulars of Time Special Dharshan Entrance fee (per persons) - Rs. - - 1. Viswarupa dharshan only morning 6.00a.m. 10.00 when the Lord is placed to 7.00 a.m. in the mirror room.

2. Thiruvaradhana & Nivedhan morning 7.00am Dharma Darshan and 8.00 am.

3. Noon pooja Forenoon 10.30am Dharma Darshan to 11.30 a.m.

4. Paid seva Noon 11.00 a.m. to 12.00 5.00

5. Thirumanjana Sevai Midday 12.30 to 25.00 (only on Fridays 2.30 p.m. at Sriperumal Moolavar Sannathi)

6. Paid sevai afternoon 3.30 p m. 5.00 to 5.00 p.m. 7. Malarangi Sevai (Every Thursday to Sriperumal Moolavar evening 6.00 p.m. and every Friday to to 7.00 p.m. Sri Thayar Moolavar) 25.00

8. Thiruvaradhana and evening 7.00 p.m. Movedjama, to 8.00 p.m. Dharmadarshan

9. Mansa Sevai Night 8.00 p.m. 5.00 8.30 p.m.

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4. In support of the writ petition, the petitioners have raised several contentions. The main contention relates to the non-compliance of principles of natural justice. It has been contended that no specific notice has been issued to the petitioners before introducing the various sevas indicated in the items already extracted. The introduction of sevas and imposition of fees have been challenged on several grounds and it has been indicated that if an opportunity would have been given to the petitioners, they could have raised their objections.

5. In the counter affidavit filed on behalf of the second respondent, apart from denying the other allegations made in the writ petition, it had been stated that the second respondent issued notice on 18.5.1999 and invited the opinion of the public before 17.6.1999. Similarly, the second respondent issued individual notice to the Archagars and Sthanigars dated 12.5.1999 and invited them to participate in the meeting on 18.5.1999 at 4.00. On 8.5.1999 the Archagars and Sthanigars attended the enquiry and gave their consent for the proposal put forth by the second respondent. It has been further stated in the counter that the allegation that petitioners were not aware of fixation of entrance fee is absolutely false. In fact, the details of fee to be revised and to be fixed have

been clearly mentioned in the notice dated 18.5.1999 issued to the public as well as petitioners. Hence the petitioners cannot plead their ignorance with respect to fixation of fees for entrance.

6. Apart from the above stand, it has also been pleaded that the petitioners have alternative remedy u/s 14 of the Act.

7. First respondent has adopted the counter filed by the second respondent.

8. In the reply affidavit filed on behalf of the petitioners it has been stated that if notice of the actual proposal would have been given they could have pointed out the illegalities. The petitioners had merely consented to the entry fee and what is introduced is not entry fee. It has been further stated that the allegations in para 8 of the counter affidavit under reply are not correct. In the affidavit the petitioners did not say that they were not aware of fixation of entrance fee. In para 4 of the affidavit the petitioners did not challenge the levy of entrance fee. The second respondent informed the petitioners that entry fee is, any person who enters into temple must pay Rs.5/-but what was actually introduced is totally different, items 1,5,7 and 9 are not entry fee, 4 and 6 relate to the fee payable for worship and not for entry. A copy of ticket issued is filed along with the reply. This shows entry fee and not paid seva. The booklet, notice dated 1.1.2000 issued by the second respondent and the system approved by the Commissioner are totally different. Further, the averments in para 10 of the counter affidavit under reply are not correct. Notice was not given for any of the items which are challenged. Paid seva is different from entry fee. Vague expression entry fee is used and the details now mentioned in the order are not given in the notice. It is not known how the deponent of the counter affidavit states that there is no increase in duty time. Upto 1999-2000 the duty time starts at 6.30 AM. Now starts at 6 AM. The temple closed at 8.00 p.m. Now 8.30 p.m. Fridays now 12.30 to 2.30 working time. Previously Thirumanjanam was over in one hour. Now they have to remain for one hour more, Mondays to Thursdays one hour was increased, on Friday two hours were increased. The statement that there is no increase in duty time is contract to facts.

9. The objections of the learned counsel for the respondents regarding the existence of alternative remedy may be considered first. Even assuming that alternative remedy was available, law is well settled that when the question of violation of principles of natural justice is raised, the High Court is not precluded to go into the matter inspite of the existence of an alternative remedy. In the present case inspite of the objection being raised regarding the existence of alternative remedy, this Court had entertained the writ petition and the matter has remained pending in the High Court. In the above circumstances, it would not be appropriate to drive the petitioners to avail of the alternative remedy, at this point of time.

10. In the judgment reported in 94 LW 26, (The Executive Officer, Sree Arthanareeswarar Devasthanam, Tiruhengode, Salem District v. S.N.

Balasubramanian Gurukkal (died)and others) while considering the question of introducing the ticket system it has been observed by this Court that any introduction of ticket system without notice to the archagars would be invalid.

11. Even in the decision reported in 2001 (1) LW 544 (Dikshithar v. The Executive Officer, Sri Rajagopalaswamy Devasthanam, Mannargudi, Thanjavur District) relied upon by learned counsel for the respondents, there is no contrary observation. As a matter of fact it has been observed in paragraph 22

"If there is going to be a variation whether it be an increase or decrease in the Archanai Ticket System and fixation of fees for services etc., the Archakas are entitled to Notice and they must be heard before determining the said amount."

12. In view of the above accepted principles of law, it has to be decided as to whether the principles of natural justice had been complied with in the present case or not.

13. The respondents have relied upon the notices dated 12.5.1999. It is necessary to quote the relevant portions from the aforesaid notice.

"1) The present charges fixed in Sahasranama Archana and Ashtothra Archana has been in force for many years, the income derived from the said Archana Tickets is insufficient to meet the needs of essential expenditure of Thirukoil.

2) The administration has decided to increase the charges for Archanai and to introduce entry ticket with a view to argument the income by adding source of income.

3) About the above subject, a consultative meeting is to be held on 18/5/1999 to ascertain the views of Archakars and sthanigars addressed below. They are requested to attend the meeting without fail and express their views".

14. A perusal of the aforesaid notice indicates that the proposal was to increase the charges for archanai and to introduce entry ticket. In the aforesaid notice there was no specific proposal to introduce new types of fees, including the types of Dharshan as indicated in the extracted portion of the impugned order dated 30.11.1999. As already indicated, the aforesaid order dated 30.11.1999 had also increased the charges for archana ticket as indicated in item 1 of the order and entrance ticket as indicated in item 2 and licence ticket charges are indicated in item 3, which are not objected to by the petitioners. The contention of the respondents to the effect that the petitioners had agreed to the introduction of entry ticket, has to be examined in its proper perspective. As indicated by the petitioners they have no objection for the introduction of entrance ticket charges but it has been submitted by them that at no point of time it was indicated that there would be introduction of a new sevas and fees would be imposed, which would necessarily mean, increase in the work timings of the petitioners.

15. The question of non-compliance of the principles of natural justice would always depend upon the facts and circumstances of a particular case. The

principles of natural justice cannot be confined to a strait jacket formula. It is no doubt true that in the present case, the respondents had given notice to the archagars and sthanigars, but the notices did not sufficiently indicate about the proposals which have been included in the impugned order. The notice merely indicated about the proposal to avail entry fee. But the details were never been indicated. The objections which were subsequently raised by the petitioners in their letter dated 25.2.2000 and reiterated in the present writ petition were never considered, even though the petitioners have agreed for increase in archanai ticket and entry fee, it cannot be said that they had agreed for introduction of special entrance fee for new types of sevas/poojas.

16. Keeping in view the above aspects, the contention of the learned counsel for the petitioners to the effect that the principles of natural justice had not been followed, cannot be lightly brushed aside. For the aforesaid reasons, I am inclined to quash the portion of the order dated 30.11.1999 so far as it relates to the introduction of new entrance fee. It is made clear that so far as the other items are concerned, namely, regarding increase in the charges for archanai ticket, entrance ticket charges and licence ticket charges, having not been challenged can be given effect. So far as the introduction of "new entrance ticket fees" as per the order dated 30.11.1999 is concerned, the said question has to be reconsidered by appropriate authorities after giving an opportunity of filing objection by the petitioners and other persons likely to be affected and necessary decision should be taken by the appropriate authority in accordance with law, after giving an opportunity of hearing to the archagars and sthanigars.

17. Subject to the aforesaid direction and observation, the writ petition is allowed to the extent indicated above, without any order as to costs. Connected W.M.P. is closed.

