
(1959) 01 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 633 of 1958

Krishnan Namboodiri

APPELLANT

Vs

Travancore Devaswom Board

RESPONDENT

Date of Decision : 02-01-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1960 Ker 97 : (1959) 3 KLJ 335

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : P. Kochukrishna Pillai, for the Appellant; V.G. Sankaranarayana Pillai and A.S. Narayanan Asan, for the Respondent

Final Decision : Dismissed

Judgement

T.K. Joseph, J.—This is a petition under Article 226 of the Constitution by which the petitioner who was one of the applicants for the office of the Melsanthi at Sabarimala temple seeks to have an order of the 1st respondent, the Travancore Devaswom Board appointing the 2nd respondent as Melsanthi, quashed.

2. The main averments in the petitioner's affidavit are as follows: The Assistant Commissioner of Devaswoms, Ambalapuzha invited applications from qualified candidates for the post of Melsanthi at the Sabarimala temple and the petitioner applied, for the same on 17-4-1958. The application was forwarded to the Commissioner of Devanwoms with a recommendation that the petitioner be appointed as Melsanthi. The recommendation was approved by the Commissioner who forwarded the same to the 1st respondent for sanction. Disregarding the recommendations, the 1st respondent appointed the 2nd respondent as Melsanthi for one year, with effect from 1-3-1134. This order is sought to be quashed on various grounds such as that the 1st respondent did not act according to the rules regarding such appointments, that the 1st respondent was not competent to appoint a person who was not recommended by the Commissioner or the Assistant Commissioner, that the 1st respondent illegally

usurped the functions of the Commissioner who was to make the appointment under the rules, that there were only two members constituting the Devaswom Board at the time of the appointment and that the appointment by the two members before the third member came in was void, that the petitioner had proper qualifications whereas the 2nd respondent did not possess the same and that the 1st respondent acted mala fide in the matter duo to the fact that the 2nd respondent was related to Sri Damodaran Asan, one of the members of the Board. Respondents 1 and 2 have entered appearance and filed separate counter-affidavits raising more or less similar contentions. They deny all the material allegations on which the order is sought to be quashed. It is further stated by them that the allegation of mala fides is groundless and that the 2nd respondent who was qualified for the post was appointed in accordance with the rules. A further ground is taken that the petition is not maintainable as the 1st respondent was not exercising any judicial or quasi judicial function in making the appointment. The petitioner has filed an affidavit in reply stressing the allegation of mala fides.

3. The first question which arises for decision is whether the petition is maintainable. According to the respondents the 1st respondent was not exercising any quasi-judicial function and this order of appointment is not liable to be quashed by a writ of certiorari. This objection is substantial and in my opinion, it should prevail. The 1st respondent was exercising only an administrative function in filling up the vacancy of Melsanthi in the temple. There are no statutory rules governing the selection of candidates for such appointments and the rules regarding the same are only those made by the 1st respondent, for its own guidance. This position was not seriously disputed by the petitioner and any breach of such rule does not therefore make the matter justifiable. Though a ground was taken in the petition that in the absence of the third member the other two members were incompetent to act, the same was not pressed in view of the statutory provision in that behalf. The petitioner who was one of the candidates for the post cannot be said to have a vested right to such appointment and it is not clear how he is competent to challenge the appointment of a candidate who was considered fit by the appointing authority. I do not think that the jurisdiction under Article 226 is intended to confer the right or duty to examine the propriety of the selection of a candidate for a post under the appointing authority. It cannot be said that the 1st respondent was exercising judicial or quasi-judicial function in selecting the 2nd respondent in preference to the petitioner. The petition must therefore fail on this ground.

4. I may however add that the petitioner has no case even on the merits. It is seen from the 1st respondent's file that the final recommendation of the Commissioner of Devaswoms made on 25-9-1958 was to appoint the 2nd respondent as Melsanthi. All that the 1st respondent did was to sanction the appointment of the 2nd respondent as recommended by the Commissioner. It cannot therefore be said that the 1st respondent usurped the functions of the Commissioner. The petitioner has made an allegation that the 2nd respondent is

related to Sri Damodaran Asan, one of the members of the 1st respondent Board and that this fact weighed with the 1st respondent in selecting the 2nd respondent in preference to the petitioner. The 2nd respondent has stated that Mr. Damodaran Asan's father who was a member of the family of the 2nd respondent had died 36 years ago and that the common ancestor of Sri Asan and the 2nd respondent was the latter's great-great-grand-father. Even if this he deemed to be relationship in the sense in which it is understood by the community to which Sri Asan belongs it cannot be said that the appointment is vitiated by mala fides in view of the fact that the final recommendation of the Commissioner was that the 2nd respondent was to be appointed to the post. There is thus no substance on the merits either. The Commissioner of Devaswoms sought the sanction of the 1st respondent and the order as seen from the file is "The Devaswom Commissioner's recommendation is accepted". It cannot therefore be said that the 1st respondent usurped the functions of the Devaswom Commissioner. The petition must therefore fail on the merits also.

5. In the result the original petition fails and is dismissed with costs including Advocate's fee of Rs. 100 to each of the respondents.