
(2015) 10 KL CK 0178

In the High Court Of Kerala

Case No : WP(C) Nos. 30447 and 30960 of 2015 (E)

Krishnan Namboothiri S.

APPELLANT

Vs

The Travancore Devaswom Board and Others

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 89
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2015) 5 KHC 829 : (2015) 4 KLT 614

Hon'ble Judges : T.B. Radhakrishnan, J;Anu Sivaraman, J

Bench : Division Bench

Advocate : S. Subhash Chand, for the Appellant; Krishna Menon, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T.B. Radhakrishnan, J—These writ petitions relate to the selection of Melsanthies for Sabarimala Sannidhanam and Malikappuram temples for the year 1191 M.E.

2. We have heard the different learned counsel who appear for the petitioners, the learned standing counsel for the Travancore Devaswom Board, the learned Senior counsel for one of the private respondents and the learned counsel for the other respondents.

3. The selection procedure for appointments of Melsanthies of Sabarimala Sannidhanam and Malikappuram temples was an issue which went up to the Honourable Supreme Court of India, when a challenge was carried against earlier orders issued by this Court. The Honourable Supreme Court referred that issue for mediation and a mediation settlement was drawn up on consent of parties and Mr. Justice K.T. Thomas, Former Judge of the Honourable Supreme Court, who was the Mediator, sent up that report to the Apex Court. That mediation settlement agreement fundamentally related to the composition of selection committee for interviewing and awarding marks for selecting Melsanthies of Sabarimala Sannidhanam and Malikappuram temples. At that point of time, that

was one of the seriously contested issues and that was the only issue that was put for mediation. The terms of that settlement read as follows:-

"Terms of settlement

1) The composition of the Selection Committee (for interviewing and awarding marks for selecting "Melsanti" for both Sabarimala and Malikappuram temples) was one of the seriously contested issues. All parties, after detailed discussions, agreed to have the Selection Committee to consist of the following persons:

A. i) President of Travancore Devaswom Board ("TDB" for short)

ii) The Member of the TDB

iii) The remaining Member of the TDB.

iv) The Commissioner of TDB.

B. i) The Senior Thantri of "Thazhamon Illam/Madom"

ii) The Junior Thantri of "Thazhamon Illam/Madom"

C. The "Outside Thantri" selected in the process indicated in clause (a) of para 2 below:

2) The following modalities have been agreed upon by all as to the formation of the Selection Committee:

a. The Thazhamon Illam (hereinafter referred to as "the Illam" for short) will send up names of three persons whom they consider eminent Thantries to the Travancore Devaswom Board. Keeping those names in serious consideration, the TDB will draw up a list of ten persons who are eminent Thantries. That list will be forwarded to the Senior Raja of Pandalam Royal family (hereinafter referred to as "Senior Raja"). The latter will choose five names from the said list and forward such names to the Illam. The Senior Thantri of the Illam will choose one of them and communicate the same to the TDB. Thereupon, proceedings will be drawn up by TDB appointing the chosen person as the "Outside Thantri" to be on the selection panel. TDB will notify the same. This panel will be valid for one year. But the same procedure will be adopted for composition of the Selection Committee thereafter also year after year, unless there is statutory intervention.

b. It is made clear that if Illam is not sending up the names to the TDB within one week of receipt of a requisition for that purpose made by the TDB, it is open to the TDB to prepare the panel of names and send it to the Senior Raja. Similarly, if Senior Raja is not sending the names chosen by him to the Illam, within one week of receipt of the panel from TDB, it is open to the TDB to request Thazhamon Illam to choose one name from the original panel prepared by the TDB.

c. If the Illam is not selecting one person from the panel sent by the Senior Raja (or by the TDB as the case may be) within a reasonable period, it is open to the

TDB to choose one from the panel already formulated by them and notify him as the "Outside Thantri" to be on the Selection Committee.

The above is only for composition of the Selection Committee. The next task is to select the "Melsantis".

d. The TDB will make the names of all the applicants available on their web site, so that it is open to the Senior Raja to find out whether there is any blemish for any of the applicants and communicate that fact to the TDB and or to the Senior Thantri, well ahead of commencement of the selection process.

e. Next is the preparation of a list of selected candidates after holding the interview of the applicants by the members of the Selection Committee.

While interviewing candidates for "Melsantis" the members of the Selection Committee can award a total of 90 marks. Out of the 90 marks, 30 marks are set apart for the President, Members and Commissioner of TDB for putting such questions as are deemed necessary for eliciting general knowledge of each candidate and to test his personality. The remaining 60 marks are set apart for putting questions to elicit candidates' knowledge in Sanskrit, poojas, rites, Tantric Rituals and other religious matters. Questions in this regard shall be put by the remaining Members of the Selecting Committee formulated above. Out of the 60 marks thus set apart for eliciting the candidates' knowledge in Sanskrit, poojas etc. the Unit comprising of the Senior Thantri and Junior Thantri of Thazhamon Illam/Madom together can award marks up to 30. The other Unit (the "Outside Thantri") can award marks up to 30.

f. After the Selection Committee finalises the list of selected candidates for both Sabarimala and Malikappuram the final choice will be made by draw of lot. The Senior Raja agreed to depute a male child (not above the age of ten) for Sabarimala and a female child (not above the age of ten) for Malikappuram for the purpose of drawing the lot. If male/female child for the above purpose is not deputed by the Senior Raja within a reasonable period, it is open to the TDB to arrange for draw of lot in such manner as they deem fit.

3) All parties agreed that the appeals can be disposed of in terms of the above settlement."

4. The learned counsel for the petitioners argued, firstly, that the selection was made by a Committee which did not consist of both the Members of TDB and that one of the Members of TDB had not participated in the selection. This fact is not disputed by TDB. The question on this issue is only as to whether the selection is unsustainable because one Member of TDB was not present during the interview.

5. The next issue raised is that TDB had, through a process of appeals, cleared applications which were not acceptable, going by the report of the Vigilance Department of TDB. The issue is that persons who are unqualified were permitted to participate on the premise that they were earlier permitted to participate.

6. The third point raised is that the candidates, who had applied for being considered for the posts of Melsanthies of Sabarimala Sannidhanam and Malikappuram temples, were not independently interviewed for both the posts and it was as if they were asked whether they have anything more to add when they were called in for the interview in relation to the post of Melasanthi of Malikappuram temple.

7. Another challenge raised is that the Secretary of TDB was permitted to sit and also to participate in the selection process.

8. The petitioner in WPC No. 30447 of 2015 has also put forward a case that no questions in general knowledge were put by either the President or the Member or the Commissioner of TDB, and they predominantly relied on the questions put by the Thantries.

9. A counter affidavit is placed on record by TDB. A reply affidavit is also placed.

10. The predominant factual contest by TDB is that its Secretary did not participate in the interview and had never asked any question. We cannot but accept that submission, since that is more a matter of record and no personal bias or mala fides is charged against the person holding the post of the Secretary of TDB. We also see that the records do not disclose that the Secretary, TDB had participated and put marks in the interview.

11. We are also not impressed by the plea that no questions were put by the President or the Member or the Commissioner of TDB. Firstly, the plea in that regard stands contradicted through the counter affidavit. Secondly and more importantly, the provision in clause "2(e)" enabling the President, the two Members and the Commissioner of TDB to put questions as are deemed necessary for eliciting general knowledge and to test the personality of the candidate is one that leaves to the wisdom of that group as to the questions to be put. This, obviously, includes their ability to assess the factors relating to a candidate even without individually putting questions of the nature which the candidate expects. Hence, the circumstance of no question being put is not by itself an element that would vitiate the selection process.

12. Next, we proceed to consider the plea that the appeals of some of the applicants were erroneously decided by TDB. The process of selection includes weeding out the unfit. That process, to the extent discernible from the terms of settlement regarding the selection committee, is one which provides the manner in which the selection committee has to be constituted and the procedure by which the Senior Raja of Pandalam Royal family would be involved in the process. It also provides the manner by which the Senior Raja of Pandalam Royal family will have access to the list of persons being considered. Beyond that, the internal mechanism of TDB essentially gives it the liberty to provide for a mechanism that it chooses to ensure that unqualified persons do not come in. Firstly and fundamentally, we may visualise that selection to the post of a Melsanthi cannot be treated as a selection merely for public employment and the canvas in which

grounds relating to Articles 14, 16 etc. of the Constitution of India would be etched, will not necessarily be carried, as a whole, into such matters. The TDB is an institution by itself. It is a statutory body. It is a body corporate and has a common seal. It decided to consider appeals by persons whose applications were found liable to be rejected by its vigilance wing. Considering the appeals, it gave opportunity to certain persons who have filed appeals to participate in the interview, on the basis that they were included in the panel for selection during the previous years. There is no constitutional anathema or any illegality in such action, which warrants to be visited in exercise of jurisdiction under Article 226 of the Constitution of India.

13. Now, coming to clause "1.A" of the terms of settlement quoted above, it can be seen that the selection committee consists of three groups of persons. First group is the President, the Member, the remaining Member and the Commissioner of TDB. The second group is the Senior Thantri and the Junior Thantri of Thazhamon Illam/Madom. The third is an Outside Thantri, the selection of which person is to be done in terms of para 2 of the terms of settlement.

14. In clause "1.A" of the settlement, it can be seen that four persons are grouped as a lot; the President, the Member, the remaining Member and the Commissioner of TDB. If it was the intention of the parties to the mediation settlement that TDB as a unit itself would be in the selection body along with its Commissioner, we do not expect that this would have been the mode of expression of the terms. It is not as if TDB sits supported by its Commissioner to form the first group of persons. The four persons together constitute the first group. Under such circumstances, we repel the argument on behalf of TDB that the first group is nothing but the TDB and its Commissioner, and therefore, even if one of the Members of TDB is absent, it can be taken as a decision by the Board and the Commissioner by falling back on the curative statutory provision in Section 4A of the Travancore-Cochin Hindu Religious Institutions Act, 1950, which provides for validity of proceedings which may be affected by defect in the constitution of the Board. There is absolutely no room to hold that the institution called TDB is by itself a party to the selection committee, as ought to be constituted in terms of the settlement.

15. Now, allotment of marks is governed by clause "2(e)". That is the procedure by which the preparation of a list of selected candidates is to be made after holding the interview. Thirty marks are set apart for the President, the Member, the other Member and the Commissioner of TDB. The scope of their examination is to elicit general knowledge and to test personality of candidates. This can be done by putting questions. The remaining 60 marks will be on matters relating to Sanskrit, poojas, rites, tantric rituals and other religious matters. Thirty marks out of those 60 marks is earmarked to be by the unit comprising of the Senior Thantri and the Junior Thantri of Thazhamon Illam/Madom. The remaining 30 marks is earmarked to be awarded by the unit with a singular member who is

the outside Thantri. Therefore, bifurcation of marks as 30:30:30 between the three units is 30 marks by the unit which comprises of the President, the Member, the remaining Member and the Commissioner of TDB and another 30 marks by the unit which comprises of the Senior Thantri and the Junior Thantri of the Tazhamon Illam/Madom and another 30 marks by the Outside Thantri. Therefore, in awarding the marks out of the 30 marks earmarked for allotment by them, the President, the two Members and the Commissioner of TDB stand in unison and operate as a cohesive unit. So much so, the question to be further examined is as to whether the scheme of the terms of settlement visualises a compartmentalised allotment of marks by each member of each of the units. On a comprehensive and deeper consideration of all relevant aspects of this matter, we are of the view that such an approach may thwart the purpose and objects of the settlement arrived at between the parties and the terms of settlement which have been recorded by the Apex Court. This is so because, in terms of Section 89 of the Code of Civil Procedure and other enlightening provisions relating to the alternative disputes resolution mechanisms, including mediation, the prime concern is to visualise and act upon a mediation settlement by treating it as if it is a compromise, the terms of which will have to be understood and applied in the backdrop of laws relating to compromise among the parties to a litigation. The scheme of the settlement and purpose of the selection to provide Melsathies for Sabarimala Sannidhanam and Malikappuram temples have to be borne in mind and cohesively treated while assimilating and applying the terms of the settlement. The reasoning process in this regard can be best addressed by posing a question as follows: While the Senior Thantri and the Junior Thantri are to be taken as a single unit; if for some reason, the Senior Thantri or the Junior Thantri treats himself to be disabled from participating in the selection process by any reason touching matters of religion and faith, including Vis major, which will preclude the entire branch of his family from participating in the interview, what would be the outcome if it is insisted that the Senior Thantri and the Junior Thantri have to award marks separately? Are we to take it that the parties to the settlement had visualised that there must be a breakdown of the selection process in such eventuality? Definitely not. Hence, the irresistible conclusion is that it would be open to the members of a unit to take a collective decision to conclude its views even if a member of that unit is not present in the interview. That approach is equally applicable to the first group of persons in clause "1.A" of the settlement. Therefore, while we repel the argument on behalf of the TDB that the TDB is to be treated as an institution by itself for the purpose of constitution of the selection committee in terms of the settlement, we hold that the President, the Member, the remaining Member and the Commissioner of TDB are individually members of the first unit of the selection committee. We further hold that the impugned selection is not vitiated merely because of the absence of one of the Members of TDB during the course of interview and in the selection process. The decision of the other three persons will be treated as a decision of that unit comprising of four persons and will, therefore, be binding and is to be counted for the purpose of concluding the selection. That way, the challenge

levied against the selection fails.

16. Another incidental issue that needs to be dealt with is as to whether the selection committee had acted contrary to the settlement in the manner of conducting the selection of Melsanthies of Sabarimala Sannidhanam and Malikappuram temples. Certain persons apply to be considered only for appointment as Melsanthi of Sabarimala Sannidhanam temple. Certain persons may apply to be considered for appointment as Melsanthi of only Malikappuram temple. Some may apply for both posts. Going by the scheme of the terms of settlement, it is permissible for the selection committee to carry out one selection and use the result of that selection for the purpose of creating shortlists from which the draw of lots can be made in terms of the settlement. Even if there are two interviews conducted, there is nothing illogical or illegal in utilising the result of one interview conducted for appointment to the post of Melsanthi of Sabarimala Sannidhanam, when such result will have a bearing on the selection of Melsanthi for Malikappuram temple. We do not see that there is any violation of any constitutional provision or any provision relating to statute laws in that regard. There is also no breach of the terms of settlement relating to the constitution of the selection committee and the selection process, which is entirely a matter within the domain of the Pandalam Royal family, the Thazhamon Illam/Madom, the TDB President, the two TDB Members and the Commissioner of TDB. Not only that, it is abundantly important to note that questions on matters relating to Sanskrit, poojas, rites, tantric rituals and other religious matters are left to the exclusive domain of the Senior Thantri and Junion Thantri of the Thazhamon Illam/Madom and the outside Thantri. In such matters, it is not advisable for the judiciary to visualise any compartmentalised domain depending upon the presiding Deity of a particular temple and examine the qualitative assessment and selection made by the Thantries. It is definitely within the doman of the Thantries to decide as to whether they are satisfied with the answers given by a candidate to the questions put by them, even in relation to two different temples, in such a situation. We, therefore, do not see any requirement for this Court to interfere with the selection process on this question.

17. Before parting, we may also indicate that once the terms of mediation settlement came to be in operation, the guarantee to the pilgrims, believers, worshippers and the faithful followers is that the selection process once carried through the system of the terms of that settlement will give them two persons who will occupy the adorable status of being the Melsanthies of Sabarimala Sannidhanam and Malikappuram temples. When such seeds of faith are intricately connected with religion, judicial review is impermissible to embark upon and consider any rival claims in the manner as is sought to be raised in these writ petitions. This is all the more so when no breach of the Constitution of India is demonstrated.

18. For the aforesaid reasons, these writ petitions fail.

In the result, these writ petitions are dismissed.