

(2002) 01 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No. 7261 of 2000 and Writ Miscellaneous Petition No. 10759 of 2000

K.V. Krishnamurthy Aiyengar and Others

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable Endowments, Madras and The Executive Officer, A/m Kalyanavenkatramanasami Devasthanam, Thandoni Hills, Karur District

RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 LW 600

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; G. Sukumaran, GA and R. Balasubramanian, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners are Hereditary Archakas of the second respondent temple, aggrieved by the proceedings of the first respondent dated 26-10-

1999 revising their share, filed the above Writ Petition to quash the same on various grounds.

2. According to the petitioners, they are the Hereditary Archakas of the second respondent temple; the temple was originally under the

Management of Devasthanam Committee attracts considerable Hindu devotees; offer to the Lord is by way of Kanikkai or presents and the

performance of vows, presents are made to the Archakas personally for their services in the inner shrine which are called Archana Thatchanai,

Malaikasu, Theertha Thatchanai, etc., they are entitled to the exclusive income

that are offered by the devotees; by virtue of the proceedings of the Deputy Commissioner, Hindu Religious and Charitable Endowments in O.A.No.82 of 1969, the Archakas are entitled to the rates as set forth therein. By the impugned order dated 26-10-1999, the first respondent herein had fixed the rates for Thirumanjana Katanam, Asthothram and Sahasrama Archana at Rs.1.00, 0.40, and 3.00 respectively. The amount is paid towards Archakar services from and out of Rs.10.00 that is earmarked for the services of the temple service for Thirumanjanam Kattanam is Rs.1.00 and as against the collection of Rs.10.00 in respect of Sahasrama Archakar, a sum of Rs.3.00. This amount constitutes only 30% of the collection. Earlier, the rates payable to the Archakar is 51% and the same has been reduced by 21%. Likewise, in Astothram, the Archakar was given 64%, but now it is hardly 20%. This is wholly illegal, irregular and unconstitutional. It is also stated that apart from the reduction is illegal and erroneous, the petitioners were not even given notice or opportunity to put forth their stand.

3. Pursuant to Notice of Motion ordered by this Court on 27-4-2000, the first respondent-Commissioner, Hindu Religious and Charitable Endowments Department has filed counter affidavit, highlighting their stand. It is stated that the temple in question is governed by a scheme modified by the Deputy Commissioner, Hindu Religious and Charitable Endowments Department, Thanjavur in O.A.No.86 of 1956 dated 15-10-1956. The Archakas are serving the temple for limited days in a month. It is settled law that when offerings are made to the Deity, it belongs to Deity and they ought to be taken to be intended to the maintenance of the temple with all their rites, ceremonies and other religious activities connected with the temple. The Department has given due regard to the earlier order passed by the Deputy Commissioner, Coimbatore and the shares paid has not been completely wiped out as claimed by the petitioners. The Commissioner has power u/s 51 of the Act to fix the rates. The petitioners are not entitled to make any claim for Archanai fees since they are doing their work by means of grants of Inam (Oozhia Manyam). The proposals were published in Notice Board on 9-4-1998 calling for objections and suggestions. Since no objections were received either from the public or from the Archakas, the proposals were submitted to the Commissioner

through Joint Commissioner, Trichy in the reference letter dated

25-6-1998. The Commissioner, after thorough perusal, by proceedings dated 2-3-1999 permitted to enhance the ticket fees. The shares in

Thirumanjanam, Sahasranamam and Astothramam have been allocated in the impugned order.

4. In the light of the above pleadings, I heard the learned counsel appearing for the petitioners as well as the learned Government Pleader

appearing for the respondents.

5. Mr.V.Raghavachari, learned counsel for the petitioners, apart from questioning the impugned order on merits, would contend that they were not

given any notice or opportunity of hearing before passing the impugned order. According to him, when their share is being reduced by way of the

impugned order, the petitioners must be heard and their grievances must be considered. With reference to the said contention, the first respondent

in his counter affidavit, has stated that the enhancement of Archanai and other ticket fees were made in consultation with the Board of Trustees and

the consent for enhancement of ticket and the share had been obtained from the Trust Board in resolution No.9 dated 6-4-1998. In paragraph 8,

the Commissioner has further stated that the proposals were published in the Notice Board on 9-4-1998 calling for objections and suggestions.

Since no objections were received either from the public or from the Archakas, the proposals were submitted to the Commissioner through the

Joint Commissioner, Trichy and after considering all the materials, the impugned proceedings has been issued.

6. It is clear from the statement of the first respondent that though the issue regarding enhancement of Archanai and other ticket fees was in

consultation with the Board of Trustees, regarding the share of Archakas and others, the petitioners were not given individual notice of hearing. In

this regard, the learned counsel for the petitioners has brought to my notice a decision of His Lordship S.Mohan, (as he then was) reported in The

Executive Officer, Sree Arthanareeswarar Devasthanam Vs. S.N. Balasubramania Gurukkal (died) and Others, , wherein, after considering the

similar contention, the learned Judge has held that-

...Therefore, on the strength of these two judgments, it can safely be held that any introduction of ticket system, without notice to the plaintiffs and

the other Archakas, will be invalid, may once again state that it is not contended before me that any specific notice was ever given to the plaintiffs-

Archakas excepting affix a copy of Exhibit B-25 on the notice board. That in my view does not constitute proper notice.

7. Following the said decision, and after considering Section 57 of the Act in subsequent decision of His Lordship Nainar Sundaram,(as he then was) reported in 1997 L.W.579 (M.SIVANANDA GURUKKAL AND OTHERS versus THE CHAIRMAN, BOARD OF TRUSTEES, SRI

SUBRAMANIASWAMI DEVASTHANAM, VALLIMALAI AND ANOTHER), wherein, the learned Judge has held that-

Section 57 of the Act contemplates power to fix fees for services, etc., and to determine the portion of such fees payable to the Archakas or

other office-holders or servants of the religious institutions. If there is going to be a variation, whether it be an increase or decrease, the archakas,

the office holders or the servants concerned, must definitely be heard. As to whether the increase is in their favour or not, cannot be visualised

without their say being on record. That there should be a notice before there could be a fixation u/s 57 of the Act has also been recognised by

Mohan, J. in the Executive Officer,Sri Arthanareeswarar Devasthanam, Thiruchengode V. Balasubramania Gurukkal and others. Fixation would

also take in subsequent variation. It will not be in order to prejudge as to whether the variation would be beneficial or otherwise, and that is a

matter that could be gone into by the determining authority himself after hearing the party or parties concerned. This principle stands violated in the

present case.

8. In the light of categoric pronouncements and in view of the stand taken by the first respondent that the proposal was published in the Notice

Board on 9-4-1998 calling for objections or suggestions cannot be accepted as sufficient compliance of the provisions of the Act. In other words,

the petitioners are entitled to notice and opportunity of hearing. This has not been followed by the first respondent before passing the impugned

order. As a matter of fact, a perusal of the impugned order does not show any reference as regards notice to the petitioners, and their objections if

any. In the light of the said conclusion, it is not necessary to go into the merits of the claim made by the petitioners.

In the light of what is stated above, the impugned proceedings of the first respondent dated 26-10-1999 is hereby quashed. However, the first respondent is permitted to proceed afresh after providing adequate opportunity to the petitioners and pass appropriate orders in accordance with law within a period of three months from the date of production of copy of this order. Accordingly, the Writ Petition is allowed. No costs. Consequently, W.M.P. is closed.