

(1936) 12 MAD CK 0018
In the Madras High Court

K.V. Sreenivasa Ayyangar and Another	APPELLANT
Vs	
Hindu Religious Endowments Board and Others	RESPONDENT

Date of Decision : 15-12-1936

Acts Referred:

Citation : (1937) 1 MLJ 442

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—These are petitions presented by two persons, one a member of the Trichinopoly Circle Temple Committee, and the

other who is an aspirant for the office of trustee for the Sri Renganathaswami temple in Trichinopoly District, for the issue of writs of certiorari in

respect of two orders dated 16th October, 1936, and 3rd November, 1936, respectively, made by the Commissioners for the Hindu Religious

Endowments, Madras. The first order runs as follows:

The Trichinopoly Circle Temple Committee is requested not to fill up the vacancies that may arise on the Board of Trustees of the above temple by

efflux of time, pending notification proceedings No. 26 of 1936. The committee is also requested to state the date or dates on which such

vacancies are to arise within the period of the next six months.

2. The subsequent order runs as follows:

In view of the directions in Board's Memo. Notification No. 26 of 1936-4 dated 16th October, 1936, the non-hereditary trustees of the

Devasthanam) whose terms of office expire during the pendency of notification proceedings, may continue to function as trustees till the conclusion

of the said proceeding.

3. The notification proceedings referred to in these orders are proceedings taken under Chapter VI-A of the Hindu Religious Endowments Act (II

of 1927) as amended by the Act XII of 1935. The Board were taking proceedings under this chapter in respect of the temple in question and the

proceedings were then pending before the Board. The management of the temple was governed by a scheme framed by Court the details of which

are to be found in the case reported in *Sitharama Chetty v. Sir S. Subramania Aiyar* (1915) 30 M.L.J. 29 : ILR 39 Mad. 700. There can be no

doubt that till the notification under Chapter VI-A of the Act is complete, the Board has no power to modify or alter the scheme framed by the

Court. This position is not contested by the Board's Advocate. It is however contended that the orders in question do not amount to any

modification or alteration of the scheme sanctioned by the Court and that the orders in question must be deemed to have been passed with

jurisdiction in view of the general powers of superintendence and control vested in the Board by Section 18 of the Act. A preliminary objection

was also taken to these petitions on the ground that the orders sought to be brought up on writ of certiorari are administrative orders and not

judicial acts, in respect of which alone a writ of certiorari will lie. I have had to consider the question as to what is an administrative order as

distinguished from a judicial act recently in *Sri Emberumanar Jeer Swamigal Vs. The Board of Commissioners for Hindu Religious Endowments*

and Others, . The general rule laid down by Atkin, L.J., in *Rex v. Electricity Commissioners* (1924) 1 K.B. 171 which was accepted and

explained by Slesser, L.J., in *Rex v. London County Council* (1931) 2 K.B. 215 is to the effect that:

Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act

in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench division.

4. In *Rex v. London County Council* (1931) 2 K.B. 215, Slesser, L.J., added that:

It is not necessary that it should be a Court in the sense in which this Court is a Court; it is enough if it is exercising, after hearing evidence, judicial

functions in the sense that it has to decide on evidence between a proposal and

an opposition.

5. In the particular case before me, it is obvious that the Commissioners were not hearing evidence or exercising any judicial functions. There was no proposal and an opposition before them. The wording of the orders and the circumstances which led to the passing of the orders clearly show that they were meant to be passed in an administrative capacity. Even if it be true that these orders may have the effect of prejudicing the rights of private parties, it does not follow that the orders would thereby be necessarily of a judicial nature. Where there is no duty imposed by law to decide anything after weighing the material put by both parties, the order passed cannot be regarded as a judicial one. In this particular case, I have no doubt that the Board did not intend and indeed had not the power to decide anything judicially as regards the stopping of any election of a trustee or the continuance in office of any trustee whose term had expired. The orders were passed in the exercise of the general powers of superintendence and control vested in the Board by Section 18 of the Act. They were addressed to a subordinate body like the Temple Committee and they do not purport to decide any rights of parties. Even otherwise, I am of opinion that neither of the petitioners has any locus standi to apply for a writ of certiorari in respect of the orders in question. The scheme sanctioned by the Court gives the power of electing trustees to the Devasthanam Committee constituted under Act XX of 1863. There is no such committee in existence and there was no such committee in existence when the Board passed the orders in question. This is conceded as the committee constituted under Act XX of 1863 ceased to exist as soon as Act II of 1927 became law. The present committee, which is known as the Trichinopoly Circle Temple Committee, is not a committee constituted under Act XX of 1863 but under Act II of 1927. It would thus follow that neither the committee nor any member of it has any right to elect a trustee for the temple in question. In fact, the scheme became impracticable so far as appointment of trustees is concerned after the Temple Committee constituted under Act XX of 1863 ceased to exist, and if any trustee is to be appointed now, the appointment must be made by the Board in the exercise of its general powers. That the Board has such power and that the exercise of such power is an administrative act has been

held by a Bench in Anandacharlu v. Hindu Religious Endowments Board (1936) M.W.N. 1045. Strictly speaking, therefore, neither of the

petitioners can say that any of his rights have been affected prejudicially by the orders of the Board, and there is no reason why if the petitioner's

rights have not been prejudicially affected the discretionary power of issuing a writ of certiorari should be exercised in their favour. It therefore

follows that these petitions must fail and they are accordingly dismissed with costs. Vakil's fee being fixed at Rs. 50 in each case.

6. Memo, of costs will follow.