(2004) 02 MAD CK 0176

In the Madras High Court

Case No : C.R.P. (NPD) No. 809 of 2001

M. Thangarajan APPELLANT

Vs

Deputy Commissioner, Hindu Religion and Charitable Endowment Board RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 22, 33(3), 90(2), 92

Citation : (2004) 2 CTC 174

Hon'ble Judges : M. Thanikachalam, J

Bench : Single Bench

Advocate : V.K. Vijayaraghavan, for the Appellant; Sivashanmugam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Thanikachalam, J.—This revision is directed against the order passed by the Principal District Judge, Tanjore in C.M.A.No. 7/2000 confirming the order passed by the Subordinate Judge, Thanjavur in O.P.No. 128/95.

2. The revision petitioner was working as the Executive Officer, between 21.3.1982 and 8.3.1993 at Arulmighu Brahmapureeswarar Temple, Punnaiyur. For the purpose of the temple festival on 28.3.1993, the Government had not provided fund in time, which they used to provide as Dastic Allowance, despite the request made by the Executive Officer of the temple. The Executive Officer and the governing body of the temple viz., Trustees, had decided to obtain a loan of Rs. 10,000 from the deposit amount made by the temple in the bank. In pursuance of the decision taken by the governing body of the temple, informing the authorities concerned and in anticipation of the approval, the Executive Officer/revision petitioner, obtained a loan of Rs. 10,000 on 23.3.1983 and celebrated the festival on 28.3.1983.

3. When the temple accounts were audited by the Audit Department, they had

noticed the irregularity committed by the Executive Officer, viz., the revision petitioner, in obtaining a loan, that too, without the prior permission of the Commissioner of H.R. & C.E., thereby causing a loss of Rs. 4,485.35 by way of interest. Therefore, the audit department had recommended for departmental proceedings, for the irregularity committed by the then Executive Officer of the temple viz., the revision petitioner. In pursuance of the audit report, notice was issued to the Executive Officer, directing him to make good the loss sustained by the temple, in view of the loan obtained by him, thereby depriving the interest to the temple to the tune of Rs. 4,485.35. The Executive Officer had failed to pay the amount and thereafter, a surcharge proceedings was initiated and in R.C.No. 22421/87/D3, the concerned authority had passed a surcharge order on 22.11.1974, directing him to pay the amount due to the temple, which is estimated as loss, because of the irregularity committed by the Executive Officer.

4. The revision petitioner, questioning the surcharge order dated 22.11.1974, as contemplated under the Tamil Nadu Hindu Religious and Charitable Endowments Act, (hereinafter called ''the Act'') filed a petition before the Subordinate Judge, Thanjavur in O.P.No. 128/95, contending that by obtaining a loan of Rs. 10,000, he had not spent any amount for his benefit, whereas the amounts were spent only for the celebration of the festival of the temple, since the Government had failed to provide the amount within the time and therefore, actually there was no loss of any kind to the temple and the surcharge order passed against him is not maintainable and is liable to the set aside.

5. The respondent H.R. & C.E. opposed the application contending, that the Executive Officer is expected to perform the festival, provided there is sufficient funds in the temple, that he is not expected to borrow loan and spend the same, making the temple, liable to pay the debt, and that the conduct of the revision petitioner, in obtaining the loan, that too without prior permission of the Commissioner, H.R. & C.E., which is mandatory, is illegal. In this view, they have further urged, that by the act of the Executive Officer, there was a loss, by way of payment of interest to the tune of Rs. 4,485.35 and this should be recovered from the person concerned and therefore, surcharging the revision petitioner by the authority concerned is proper, not required to be nullified.

6. The learned Subordinate Judge, after elaborate enquiry, hearing the parties, came to the conclusion that the revision petitioner exceeded his limit in obtaining a loan of Rs. 10,000, thereby making the temple, to pay interest, that too without the written permission of the Commissioner and for the act done by him, he has to suffer, satisfying the surcharge order. In this way, the petition came to be dismissed on 12.10.1999, which was challenged before the District Judge in C.M.A.No. 7/2000. There also, the revision petitioner was unable to satisfy the learned Principal District Judge, justifying his conduct, in obtaining the loan or by his conduct, no loss was occasioned to the temple. Therefore, the C.M.A. was also dismissed on 31.7.2000, which is under challenge in this revision.

7. Heard the learned counsel Mr. V.K. Vijayaraghavan, appearing for the revision

petitioner and the learned counsel Mr. Sivashanmugam, appearing for the respondent.

8. The learned counsel for the revision petitioner submits that the then Executive Officer of the temple viz., the revision petitioner had not committed any act, detriment to the temple interest and bonafidely and genuinely, only in order to perform the annual festival, a sum of Rs. 10,000 was obtained as loan from the deposit of the temple, which was lying in the bank, that too in anticipation of approval by the Commissioner of H.R. & C.E. and this act will not attract a surcharge proceedings, since the revision petitioner had not misappropriated or retained any money belonging to the temple or illegally or improperly spent the same. Further he submits, in view of the act, that there was no prior permission, which ought to have been obtained, if at all, departmental proceedings alone ought to have been initiated for the irregularity committed by the then Executive Officer, but contrary to the same a surcharge proceedings was initiated, despite the fact, the audit department had recommended only for departmental proceedings.

9. On the other hand, the learned Government Advocate would contend, that by the act of the revision petitioner in not obtaining prior permission and obtaining a loan from the bank, though on the basis of the deposit, the temple was compelled to pay interest to an extent of Rs. 4,485.35 and this loss was incurred by the temple only by the conduct of the petitioner and therefore, the surcharge proceedings initiated against him and the subsequent proceedings are well sustainable and in this view, he submits the revision petition deserves to be dismissed.

10. The admitted position is that the revision petitioner was functioning as the Executive Officer of Arulmighu Bramapureewarar Temple between 21.3.1992 and 8.3.1993. Panguni Uttram festival was conducted on 28.3.1993 in this temple. As contemplated u/s 92 of the Act, Government should contribute amounts depending upon the income, for the functioning of the temple. It is the usual practice of this temple, that they used to receive dastic allowance, but in this case before 28.3.1983, the Government had not paid the amount. The executive officer in his anxiety, performed the festival, informing the matter to the authorities concerned on 22.3.1993, admittedly obtaining a loan of Rs. 10,000 on 23.3.1993 and performed the festival on 28.3.1993. Though, it is contended that there was oral permission, it is not substantiated. It is also an admitted fact that the revision petitioner had not obtained written permission, for obtaining the loan, which is mandatory under law. By considering the failure of the Executive Officer, the Audit Department had objected, recommending proceedings against the Executive Officer, which resulted in surcharge proceedings, as aforementioned. Therefore, we have to see, by obtaining a loan of Rs. 10,000, whether the then Executive Officer of the temple namely the revision petitioner, had caused any loss to the temple, in order to surcharge him, for the repayment of the amount.

11. Even as seen from the counter, it is not the case, of H.R. & C.E. that the revision petitioner though obtained a loan of Rs. 10000 had not spent the entire amount for the purpose of the festival in the temple or he misappropriated or retained any amount. It is also not the case of H.R. & C.E., as seen from the counter, that the loan obtained by the revision petitioner was spent illegally or he had incurred improper expenditure. Having the above admitted facts in mind, we have to see whether the surcharge proceedings shall lie against the Executive Officer of the temple.

12. Section 90(2) contemplates surcharge proceedings on the basis of the defects disclosed in audit against the trustees and others. It says:

"If on a consideration of the audit report and the report of the trustees and after such inquiry as may be necessary, the Commissioner, the Joint Commissioner, Deputy Commissioner of Assistant Commissioner, as the case may be, thinks that the trustee or any other person was guilty or irregular, illegal or improper expenditure, or of loss or waste of money or other property thereof caused by failure to recovery moneys due to other property belonging to the religious institution or by neglect or misconduct or misapplication or collusion or fraudulent transactions or breach of trust, the Commissioner, the Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, after giving notice to the trustee or such person to show cause why an order of surcharge should not be passed against him and after considering his explanation, if any, by order certify the amount so spend or the amount or value of the property so lost or wasted, and direct the trustee or such person to pay within a specified time such amount or value personally".

From the plain reading of the above provision, it is seen that the trustee or the Executive Officer, as the case may be, could be surcharged, if they are guilty or they had incurred irregular, illegal or improper expenditure involving loss or waste of property. Another corresponding Section 33(3) of the Act also reads, to the same effect, which says misappropriation also. Section 33(3) reads:

"Where in the course of such inspection, it appears that the trustee of the institution, concerned, or any of the officers or servants working under him, his agent or any other person having concern in the administration of the institution, past or present has misappropriated or fraudulently retained any money or the property or incurred irregular, illegal or improper expenditure, the Commissioner may, after giving notice to the trustee or person concerned to show cause why, an order to surcharge should not be passed against him and after considering his explanation, if any, by order, certify the amount so lost and direct the trustee or such person to pay within a specified time such amount personally and not from the funds of the institution".

On the basis of this provision also, if a person had misappropriated the amount or incurred expenses not authorised or incurred expenses under the guise of spending the same to the temple for his personal benefits or something like that willfully, making loss to the temple or its property, then alone he is to be burdened with surcharge order or penalty.

13. As spoken by the Executive Officer/revision petitioner, though he had obtained the loan from the deposit, without prior permission of the superior authorities, he had not spent even a single pie for his personal benefit, misappropriating the temple fund or fraudulently spending the same, in order to say, he is a guilty person. He had borrowed the debt, not only on his decision, but also by the resolution passed by the governing body of the temple, namely the Trust Board, that too, considering the previous practice prevailed in the temple, to borrow loan, from the third parties or something like that. The only mistake committed by the revision petitioner, as observed by the Courts below, is that addressing the higher authorities for sanction of the amount on 22.3.1983, he obtained the loan of Rs. 10,000 on 23.3.1983, for the purpose of the festival on 28.3.1983. His contention that he approached the higher authorities and obtained oral permission, does not stand scrutiny. By obtaining the loan, as submitted by the learned counsel for the revision petitioner, he had paid salary to the temple staff for some period and incurred expenses for celebrating temple festival, which is more or less unavoidable. Since the Government had not provided fund in time, for the celebration of the festival of the temple, considering the practice prevailed in the temple, without any guilty intention, so to say with a bona fide belief, that his act will not be questioned, since he is obtaining the loan for the purpose of Pooja, he committed the irregularity, though he knew that previous sanction is a must, for obtaining the loan. By the conduct of the petitioner, there is no actual loss to the temple and if at all the interest, which ought to have accrued on the deposit, has been deprived of, which is quantified as Rs. 4,485.35. For this irregularity, administratively committed by the revision petitioner, if at all, he ought to have been proceeded with departmentally and not surcharging him.

14. The learned counsel for the petitioner, in support of the above contention, drew my attention to a decision of this Court in R. Sethumahdavan v. The Deputy Commissioner, H.R. & C.K., 1987 TNLJ 244. In the case involved in the above decision, there was a direction by the Deputy Commissioner, to lease out the lands, but it appears, the revision petitioner therein, had not leased out the property and in that sense, failed to obey the order of the Deputy Commissioner. In that view, quantifying the income, a surcharge order was passed, as if the authority had caused a loss of Rs. 4680 to the temple, which was under challenge in the above said revision. This Court, while considering the facts and circumstances of that case, had held, for any irregularity committed by him in failing to secure permission, would not result in himself being surcharged, but may result in any disciplinary action being taken as against him. Here also, without obtaining the prior permission, a loan was obtained. For this irregularity committed by the petitioner, knowing that he ought have taken the prior permission, if at all, he should have been proceeded departmentally. I am fully in agreement of the view expressed by this Court, in the above decision and in this

view, the surcharge proceedings initiated against this revision petitioner is liable to be set aside.

15.This same revision petitioner, by name Thangaraj, previously also involved in this kind of irregularity, receiving the wrath of the higher authorities. When a surcharge order was passed against him, which was confirmed by the Courts below, he came to this Court in C.R.P.No. 3612/93. In that case, it seems the petitioner while working as Executive Officer in Kondeeswarar Temple at Puthur Village, Valangaiman Taluk, appointed a watchman, without getting sanction from the Commissioner as well as purchased firewood by spending Rs. 3 per day, which were objected during the audit, resulting surcharge proceedings. When the surcharge proceedings was questioned by this revision petitioner, in the above said C.R.P., this Court has held, placing reliance upon the previous decision, that,

"no loss was caused to the temple by the act of the revision petitioner, and therefore, initiating surcharge proceedings on such untenable grounds is, in my opinion, totally without jurisdiction".

On the basis of the above dictum also, in my considered opinion, the surcharge proceedings initiated against the petitioner is not maintainable, since there was no loss actually caused to the temple, whereas by the act of the revision petitioner, the sentiments of the village people was fully satisfied, by performing Panguni Uttram, as scheduled and for the good cause, he should not be surcharged.

15. Unfortunately, the Courts below without considering the actual loss if any, said to have been incurred by the temple, only considering the fact that there was no prior sanction, allowed the surcharge to remain against the petitioner, which is not acceptable to me.

16. For the foregoing reasons, the revision petition deserves acceptance and the same is accepted, setting aside the order of the Courts below.

In the result, the C.R.P. is allowed setting aside the order of the Courts below dated 12.10.1999 in O.P.No. 128/1995 on the file of the Subordinate Judge, Thanjavur, which was confirmed in C.M.A.No. 7/2000 on the file of the Principal District Judge, Thanjavur, dated 31.7.2000, thereby setting aside the surcharge order in R.C.No. 22421/87/D3.