

(1995) 02 MAD CK 0012
In the Madras High Court
Case No : W.A. No. 24 of 1995

Meyappa Velar

APPELLANT

Vs

Tamil Nadu Temple Administration Board and Others

RESPONDENT

Date of Decision : 21-02-1995

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 118(2),
47

Citation : (1995) 1 CTC 221 : (1995) 2 LW 238 : (1995) 2 LW 229 : (1995)
WritLR 408

Hon'ble Judges : K.A. Swami, C.J.; Somosundaram, J

Bench : Division Bench

Advocate : E.M. Sudarsana Natchiappan, for the Appellant; G. Sugumaran,
S.G.P. for the Respondents 1 and 2 and W.C. Thiruvengadam, for the
Respondents 3 to 7, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, C.J.—This appeal is preferred against the order dated 2nd December, 1994 passed by the learned Single Judge in W.P. No.

6905 of 1993. As the petition has been dismissed, petitioner therein has come up in appeal.

2. The petitioner sought for quashing the order dated 17th March 1993 passed by the 1st respondent in Na.Ka.No. A.2/49112/92 appointing

respondents 4 to 7 and one Ayyappan as Trustee of Arulmigu Vettudaiyar Kaliamman Temple Ariyakurichi, Sivaganga Taluk, Pasumpon

Muthuramalingam Thevar, District.

3. The contention of the petitioner/Appellant is that as per paragraph 2 of the scheme framed by this court in Appeal Suit 377/27 dated 11th

November, 1930, a true copy of which is produced in the typed set of records it is

only the male representative of the family of the Poojaris can be appointed as a Trustee and as such, the appointment of a female as the representative of the family of the poojaris is opposed to the Scheme; that such a provision is not repugnant to the provisions contained in Section 47 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (hereinafter referred to as the Act), therefore it is not right, hence the petitioner who was elected as representative of the families of the Poojaris, ought to have been appointed as a Trustee. It is also submitted that the Poojas in the Temple, according to the customs and traditions of the Temple, can only be performed by a male and not by a female therefore it is specifically provided in the scheme that a male representative from the family of the Poojaris should be one of the Trustees.

4. Section 47 of the Act deals with the trustees and their number and term of office etc. clause (c) of Sub-section (1) specifically provides that every board constituted under Clause (a) or Clause (b) shall consist of not less than 3 and not more than 5 person, of whom one shall be a member of scheduled castes and schedule tribes, provided the temple administration board or the district committee as the case may be, may pending constitution of such board of trustees under this Sub-section, appoint a fit person to perform the functions of the Board of trustees.

Therefore as per Clause (c) of Sub-section (1) there is no exclusion of females from being appointed as Trustees, nor there is any reservation for male members. The reservation is only for scheduled castes or scheduled tribes. The Legislature took note of the fact of the pre-constitutional laws prevailing in the state and the schemes formulated under those laws. Therefore it specifically provided in Clause (b)(i) of Sub-section (2) of

Section 118 as follows:-

(2) Notwithstanding the repeal of the said Act by Sub-section (1)(a).....(b)(i) if any provision contained in any scheme settled or deemed to have been settled under the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927) including a scheme settled u/s 92 of the code of Civil Procedure, 1908 (Central Act V of 1908) and if force immediately before the 30th September, 1991 is repugnant to any provision contained in this act or the rules made thereunder, the later provision shall prevail, and the former provision shall, to the extent of the repugnancy be void.

We have already pointed out that Section 47 which deals with the Board of trustees, does not make any reservation for males, nor does it prohibit

female members becoming the members of the Board of trustees. In such a situation, the scheme in question which provides for a representative of

the Poojaris must be from the male members of the Poojari families cannot be held to be valid and enforceable. Paragraph 2 of the scheme reads

thus:-

The temple and its properties shall be administered and managed by a body of three trustees appointed by the Ramnad District Temple committee

from time to time one of whom however shall be a representative of Poojaris and from the male members of their families and the remaining two

trustees shall be appointed from among the persons professing the Hindu Religion and above 25 years of age and residing permanently within a

radius of 5 miles from the temple and not subject to any of disqualifications mentioned in Madras Act. II of 1927. If in the opinion of the temple

committee there is no representative of the Poojaris fit and qualified for appointment, then the third trustee shall be appointed from, the class from

which the other two are appointed "".

Thus, paragraph 2 of the scheme in so far as it provides that only the male members can be representatives of the family of the Poojaris, cannot be

held to square with the provisions contained in Section 47(1)(c) of the Act. Consequently, it has become void on the coming into force of the act.

5. It is contended that as per the customs and traditions of the temple, only the male members of the families of the poojaris can perform the poojas

and not female members. This submission clearly ignores the fact that poojas in the temples are to be performed by the person appointed by the

Board of Trustees. It is not the Board of Trustees who perform the poojas and carry on other religious affairs of the temple. There are two aspects

of each temple, one temporal aspect and another religious aspect. The Board of Trustees is to administer the temple regarding the temporal aspect

and regulate the religious aspect. It does not by itself perform the Poojas and other religious ceremonies of the temple. It is only the poojaris or

other persons who are appointed to perform those functions alone could carry on or perform those functions. The Board of Trustees would be

supervising, controlling and ensuring that such functions go on as per the

traditions and customs of the temple. That being so, the contention that the petitioner is the poojari and his right as petitioner is affected, is also not correct and as such it is not sustainable.

6. Learned counsel has placed reliance on a decision of the Supreme Court in Raj Kali Kuer Vs. Ram Rattan Pandey, . It is not possible to hold

that what we have said herein - above is contrary to the ratio of the said decision. On the contrary the ratio of the said decision does not help the

contention of the petitioner/appellant. The decision in Bijoy Kumar Jena and Anr. v. The State and Ors. 1987 Lab LC 592 relied upon by learned

counsel for the petitioner need not be dealt with, as it has no bearing on the issue involved in this case.

7. For the reasons stated above, the appeal fails and the same is dismissed. However, there will be no order as to costs.