

(1999) 09 KL CK 0024

In the High Court Of Kerala

Case No : C.M.P. No's. 34452 of 1999 in C.M.P. 26343 of 1999 in O.P. No's. 16192 of 1999 C and 20350 of 1999 etc.

Mohandas

APPELLANT

Vs

Gopalakrishnan Nair and Others

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Kerala Guruvayoor Devaswom Act, 1978 — Section 1(1), 14, 17, 19, 19(1)

Citation : (1999) 2 KLJ 451

Hon'ble Judges : A.R. Lakshmanan, Acting C.J.; S. Sankarasubban, J

Bench : Division Bench

Advocate : Govind K. Bharathan for Respondents 1 and 2 and U.K. Ramakrishnan for Respondents 4 and 5, for the Respondent

Judgement

A.R. Lakshmanan, Actg. C.J.

1. C.M.P. 37116/1999 is filed by one K. Mohandas, Commissioner, Guruvayoor Devaswom to permit the Guruvayoor Devaswom to appoint a new Counsel in the place of Sri K. Radhakrishnan for conduct of the cases of the Devaswom. Since the Commissioner, Guruvayoor Devaswom was not a party to the Original Petition No. 16192/1999 permission is sought now to implead himself as a party, which was ordered in C.M.P 34451/1999. It is stated in the affidavit that in the light of certain developments in relation to the conduct of cases on behalf of the Guruvayoor Devaswom it has become necessary to change the Counsel representing the Devaswom and appoint a new Counsel to represent the Devaswom in Courts and to advise the Devaswom on legal matters. While going through the affidavit, we found certain derogatory remarks against the present Counsel Shri K. Radhakrishnan. It is stated by Mr. K. Mohandas, the Commissioner that the said Shri K. Radhakrishnan is not able to handle effectively the cases entrusted to him by the Devaswom. Similar remarks have also been made by Dr. V.M. Gopala Menon, the Administrator in the affidavit sworn to by him on 1st September 1999 against Shri K. Radhakrishnan. We are

of the opinion that the said derogatory remarks are totally unwarranted and also against facts. Shri K. Radhakrishnan has been appearing as a Counsel before this Court on several occasions and has very effectively and efficiently handled the cases on behalf of the Guruvayoor Devaswom and on behalf of other litigants. At this juncture, the learned Special Government Pleader came forward to delete those derogatory remarks and accordingly he deleted those offending portions against Shri K. Radhakrishnan in paragraph 5 of the affidavit filed by Mr. Mohandas and the derogatory remarks made in paragraph 2 of the affidavit filed by Dr. Gopala Menon.

2. We shall now come to the prayer asked for by the Commissioner and the Administrator to permit the Guruvayoor Devaswom to appoint a new Counsel in the place of Shri K. Radhakrishnan for conduct of the cases of the Devaswom. In our opinion, neither the Commissioner nor the Administrator of the Devaswom has any authority to exercise the powers and functions of the Committee. The "Committee" is defined u/s 2(c) of the Guruvayoor Devaswom Act, hereinafter referred to as "the Act", which means the Guruvayoor Devaswom Managing Committee constituted u/s 3. Section 3 deals with incorporation of the committee. u/s 3, the administration, control and management of the Devaswom shall be vested in a Committee constituted in the manner hereinafter provided. Section 4 deals with composition of the Committee. Section 4(1) reads thus:

4. Composition of Committee.-(1) The committee shall consist of the following members, namely:

- (a) the Zamorin Raja;
- (b) the Karanavan for the time being of the Mallisseri Illom at Guruvayoor;
- (c) the Thanthri of the Temple, ex-officio;
- (d) a representative of the employees of the Devaswom nominated by the Hindus among the Council of Ministers
- (e) not more than five persons, of whom one shall be a member of a Scheduled Caste, nominated by the Hindus among the Council of Ministers from among persons having interest, in the Temple.

It is not in dispute that the entire Committee which was constituted in July, 1996 is not in office except the three members, viz., (a) the Zamorin Raja, (b) the Karanavan for the time being of the Mallisseri Illom at Guruvayoor, and (c) the Thanthri of the Temple, ex-officio. It is also not in dispute that the representative of the employees of the Devaswom nominated by the Hindus among the Council of Ministers and the five persons nominated by the Hindus among the Council of Ministers from among persons having interest in the Temple have resigned their posts. At present the Committee consists of only the following three members, viz., the Zamorin Raja, the Karanavan for the time being of the Mallisseri Illom at Guruvayoor and the Thanthri of the Temple, ex-officio. Section 7 deals with the meetings of the Committee. Section 7 reads as follows:

7. Meetings of the Committee.-(1) The Committee shall maintain its office at such place or places at Guruvayoor as the Committee may determine, for the transaction of its business.

(2) Every meeting of the Committee shall be presided over by the Chairman and in his absence by a person elected for the purpose by the members present from among themselves.

(3) No business shall be transacted at any meeting of the Committee unless at least three members thereof are present.

(4) Questions arising at a meeting of the Committee shall be decided by a majority of the votes of the members present thereat, and the Chairman or the person presiding shall have and exercise a casting vote in the case of equality of votes.

Sub-section (3) of Section 7 says that no business shall be transacted at any meeting of the Committee unless at least three members thereof are present. Section 7(4) says that the question arising at a meeting of the Committee shall be decided by a majority of the votes of the members present thereat and the Chairman or the person presiding shall have and exercise a casting vote in the case of equality of votes. The Administrator is appointed u/s 14 of the act. The Administrator is appointed by the Committee, who shall be an officer of the Government not below the rank of Deputy Collector from among a panel of names furnished by the Government. No person shall be appointed under Sub-section (1) unless he professes the Hindu Religion and believes in temple worship. The Administrator appointed under the Act shall hold the office until the appointment of an Administrator under Sub-section (1) or until the expiry of a period of three months from such commencement, whichever is earlier. Section 17 deals with the powers and duties of Administrator. The Administrator shall be the Secretary to the Committee and its chief executive officer and shall, subject to the control of the Committee, have powers to carry out its decisions in accordance with the provisions of the Act. He shall arrange for the proper collection of offerings made in the Temple and shall have power to incur expenditure not exceeding five thousand rupees to meet unforeseen contingencies during the interval between two meetings of the Committee. Section 19 deals with appointment of officers and employees. Appointment of all officers and other employees of the Devaswom shall be made by the Committee. Sub-section (2) of Section 19 says that ten per cent of the posts in each grade of the officers and other employees of the Devaswom shall be reserved for the scheduled Castes and the Scheduled Tribes, of which one-fifth shall be reserved for the Scheduled Tribes. Section 19(3) says that selection of the officers and other employees of the Devaswom may be made by sub-committees constituted by the Committee from among its members, provided that the selection of employees to be in charge of the rituals and other ceremonies of the Temple shall not be made by any sub-committee of which the Thanthri of the Temple is not a member. Sub-section (4) of Section 19 states that the procedure for the

selection and appointment of officers and other employees of the Devaswom shall be such as may be determined by the Committee by regulations made in this behalf, subject to the provisions of Sub-sections (1), (2) and (3) of Section 19.

3. We shall now consider the powers of the Commissioner. The "Commissioner" is defined u/s 2(b). He must be an officer not below the rank of Secretary to Government, who professes the Hindu Religion and believes in Temple worship, appointed by the Government, by notification in the Gazette, to be the Commissioner for the purposes of the Act. Section 11 says that no movable property of a non-perishable nature which is in the possession of the Committee and the value of which is more than five thousand rupees and no jewellery shall be sold, pledged or otherwise alienated unless it is sanctioned by the Commissioner as being necessary or beneficial to the Devaswom. It also deals with the other immovable properties. Section 12 deals with the limitation of borrowing and lending powers. Sub-section (1) of Section 1 says that the Committee shall have no power to borrow money from or to lend money to any person unless it is sanctioned by the Commissioner as being necessary or beneficial to the Devaswom and the Commissioner, under Sub-section (2), shall not refuse sanction under Sub-section (1) unless the Committee has been given an opportunity of making representation against such refusal. Section 6 deals with dissolution and supersession of the Committee. Section 6 runs as follows:

6. Dissolution and Supersession of Committee.-(1) If, in the opinion of the Government, the Committee is not competent to perform or makes default in performing the duties imposed on it under this Act or abuses or exceeds its powers, the Government may, after such inquiry as may be necessary, by notification in the Gazette, supersede the Committee for such period, not exceeding six months, as the Government may deem fit.

(2) Before issuing a notification under Sub-section (1), the Government shall communicate to the Committee the grounds on which they propose to do so, fix a reasonable time for the Committee to show cause against the proposal and consider its explanations and objections, if any.

(3) Any member of the Committee may, within a period of one month from the date of publication of the notification under Sub-section (1), institute a suit in the Court to set aside the notification.

(4) Where the Committee is superseded under this Section, the Commissioner shall exercise the powers and perform the functions of the committee until the expiry of the period of supersession:

Provided that the period during which the Committee remain superseded shall not have the effect of extending the maximum term of office of a member nominated under Clause (d) or Clause (e) of Sub-section (4) beyond a period of two years.

The Commissioner, under this Section, shall exercise the powers and perform the functions of the Committee until the expiry of the period of supersession. u/s 6, if the Committee is not competent to perform or makes default in performing the duties imposed on it under this Act or abuses or exceeds its powers, the Government may, after such inquiry as may be necessary, by notification in the Gazette, supersede the Committee for such period, not exceeding six months, as the Government may deem fit. Before issuing a notification under Sub-section (1) of Section 6, the Government shall communicate to the Committee the grounds on which they propose to do so and fix a reasonable time for the Committee to show cause against the proposal and consider its explanations and objections, if any. Any member of the Committee may, within a period of one month from the date of publication of the notification under Sub-section (1), institute a suit in the Court to set aside the notification. A close reading of the above Section would say that the Commissioner can exercise the powers and functions of the Committee where the Committee is superseded u/s 6 by the Government and after following the procedure prescribed in the said notification. It is not in dispute that the Committee is not superseded u/s 6 of the Act. It is stated that the representative of the employees of the Devaswom and the five persons nominated under Sub-section (c) of Section 4 have resigned their posts and the resignation has also been accepted by the Government. In the above background, we have to see whether the Commissioner has any power to perform the functions of the Committee.

4. We have already noticed the powers given to the Commissioner u/s 6. Since the Commissioner has no power u/s 6 of the Act, he cannot discharge the functions of the Committee. As already noticed, the three members of the Committee mentioned in Clauses (a), (b) and (c) of Section 4(1) are now available and they are still in office. u/s 7(3), no business shall be transacted at any meeting of the Committee unless at least three members thereof are present. Now that the three members of the Committee are available, they alone, in our opinion, can discharge the functions of the Committee. In the foregoing circumstances, we hold that neither the Administrator nor the Commissioner can exercise the powers and functions of the Committee and the Administrator can carry out only the directions and instructions of the Committee. We, therefore, permit the Committee comprising of the above three persons to select and appoint a new Counsel, if they want to change their Counsel.

5. The prayer in C.M.P. 37861/1999 is to permit the Commissioner and the Administrator to take steps to select and appoint "Melsanthi" of the Guruvayoor Temple immediately. The prayer in C.M.P. 36526/1999 are three-fold, which are as follows:

(a) for the selection and appointment of Melsanthi of Guruvayoor Sree Krishna Temple for a period of six months;

(b) for the selection and appointment of ten Sopanam Watchman at Guruvayoor

Sree Krishna Temple for a period of six months;

(c) further be pleased to grant approval for the decision of the Thanthri to depute in His absence His Son Thanthri Brahmasree Dinesan Namboodirippad to perform the functions of Thanthri and to conduct the selection of Melsanthi, Bhandaram counting and to take golden "Kolam" from double locker for Ashtami Rohini festival.

We have already held in paragraphs above that the commissioner and the Administrator have no authority or jurisdiction or power to exercise the powers of the Committee to appoint Counsel for Guruvayoor Devaswom. The reasons stated in the paragraphs above will apply to these applications as well. We, therefore, direct the three members of the committee mentioned under Sub-clauses (a), (b) and (c) of Section 4(1) to exercise the power u/s 19 of the Act to select the Melsanthi. It is pointed out to us that if the selection process of Melsanthi is not done immediately, a serious situation of there being no Melsanthi will arise for the Temple after 1st October 1999. We agree with the above submission. It is stated that the Chief Priest (Melsanthi) of the Temple is appointed for a period of six months from among Namboodiris from specified families in specified Villages and having specified religious attainments and qualifications. It is stated that after the selection of Melsanthi, he has to purify himself by undertaking prayers within the temple precincts for two weeks and only thereafter can the person assume charge as Melsanthi and begin to discharge the functions of the Melsanthi. In view of the above, we permit the three members of the Committee to initiate the selection process of Melsanthi by inviting applications through notification, if it has not already been notified. They may scrutinise the applications and select a qualified person as per custom and regulation. The process of selection of the Melsanthi for the next term has to be completed at least fifteen days prior to the expiry of the term of the existing Melsanthi, i.e. in the present case 30th September 1999. We, therefore, direct the Committee to select the new incumbent and permit him to enter as Melsanthi on 30th September 1999 as required by the age old custom of the temple.

6. In C.M.P. 36526/1999, three prayers have been made. Prayer (a) is for the selection and appointment of Melsanthi for a period of six months, which has already been ordered in C.M.P. 37861/1999, filed by the State. The prayer (b) is for the selection and appointment of ten Sopanam Watchmen for a period of six months. The present three members of the Committee are authorised to select and appoint the ten Sopanam Watchmen at Guruvayoor Sree Krishna Temple for a period of six months. The prayer (c) relates to the grant of approval for the decision of the Thanthri to depute in His absence His Son Thanthri Brahmasree Dinesan Namboodirippad to perform the functions of Thanthri and to conduct the selection of Melsanthi, Bhandaram counting and to take golden "Kolam" from double locker for Ashtami Rohini festival. Since the Ashtami Rohini festival is over, no direction need be given on prayer (c). Hence prayer (c) has become infructuous.

7. u/s 35, the Thanthri is the final authority in religious matters. Sub-section (2) of Section 35 says that the decision of the Thanthri of the Temple on all religious, spiritual, ritual, or ceremonial matters pertaining to the Devaswom shall be final. It is stated that the present Thanthri is undergoing treatment at Chennai. We make it clear that the Committee shall convene its meeting at such place or places at Guruvayoor, as the Committee may determine, and consider the appointment of Melsanthi. It is made clear that for the selection and appointment of Melsanthi, the Thanthri himself to be present in person in the Committee meeting.