

(2000) 06 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No. 676 of 2000

N. Kumaraswamy Gurakkal

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable
Endowments, Nungambakkam, Madras- 34 and another

RESPONDENT

Date of Decision : 28-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 25
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1971 —
Section 116, 28, 55, 56
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 23, 52,
55

Citation : (2000) 4 CTC 7 : (2000) 3 LW 931

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

**Advocate : Mr. V. Raghavachari, for the Appellant; Mr. R. Balasubramaniam,
Special Government Pleader, H.R and C.E., for the Respondent**

Judgement

1. Petitioner is a Priest at Arulmighu Kapaleeswarar Thirukoil. He has challenged the order of the Commissioner, H.R. & C.E. calling upon the

petitioner to attend for an enquiry in reference retirement of all the temple servants on attaining 60 years of age.

2. The main contention of the petitioner is that the enquiry and the notice for such an enquiry, is without jurisdiction. His case is that he is a

hereditary Priest and therefore he is entitled to continue without reference to age.

3. Section 23 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 empowers the Commissioner to administer all temples

and have general superintendence and control including the power to pass any order which may be deemed necessary to ensure that such temples

are properly administered. Section 55 of the Act says that vacancies among the

office holders or servants of a religious institution shall be filled up by the trustees. As per the explanation to the Section, the expression ""office holders or servants"" will include archagas and poojaris. Section 116 of the Act enables the Government to make rules to carry out the purposes of the Act. The Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 provides for the age of the person appointed. According to this rule, every person appointed to such office shall retire on completing 60 years of age.

4. The Commissioner, in his counter affidavit, has categorically stated that the rights of hereditary succession of the office of archaga has been abolished by Tamil Nadu Act 2 of 1971 which came into force on 8.1.1971. Hence, the petitioner must be deemed to have been appointed as an archaga of the temple only from 7.8.1972. Having been born on 11.5.1936, as per Rule 5 of the Rules set out above, petitioner shall have to be retired on completing 60 years of age, i.e. on 11.5.1996. From the above facts and the position of law, it is clear that the contention that the Commissioner, H.R. & C.E. has no jurisdiction to hold an enquiry and that the petitioner is a hereditary archaga and can continue beyond the period cannot be sustained. In these circumstances, petitioner has to appear for an enquiry and establish his right.

5. It is further pointed out in the counter affidavit of the first respondent that Dr. Vishwanatha Sivachariyar, who was the Chief Priest of the same temple till 1.3.1999 and who has completed 60 years of age on 1.7.1988, was terminated from service on 16.2.1999. Against the said order, Dr. Vishwanatha Sivachariyar filed Writ Petition No.3329 of 1999 on the file of this Court to quash the order of termination. By a judgment dated 3.3.1999, K. Govindarajan, J. dismissed the writ petition. While dismissing the writ petition, he also directed the respondents to take action against other similarly placed persons who are continuing as priests even after attaining the age of 60. The said judgment was confirmed by the Division Bench in Writ Appeal No.424 of 1999 vide order dated 11.3.1999. It was also pointed out that the said Judgment was also confirmed by the Honourable Supreme Court.

6. In the above circumstances, the proceeding initiated by the respondents cannot be held to be without jurisdiction. The contention of the

petitioner that the order passed by this court earlier was on a concession and therefore, is not binding, cannot be sustained. In any event, if really

the petitioner has got materials and records to establish his right of continuance beyond 60 years, he can very well submit the same before the

Commissioner in the enquiry. The Commissioner shall pass orders uninfluenced by any of the observations contained in this order independently on

the merits of the claim of the petitioner.

7. The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 was amended by Act 2 of 1971 whereby Sections 28, 55, 56 and

116 were amended. Those provisions were upheld by the Supreme Court in *Seshammal and Others, Vs. State of Tamil Nadu*, . One of the

amended provisions related to the appointment of office holders, which included archagas. While dealing with this aspect, their lordships observed

as follows:

The Archaka has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and

rituals necessary to be performed in a temple but he does not have the status of a spiritual head. The Dharamkarta or the Shebait makes the

appointment and the Archaka is a servant "of the temple. The trustee can enquire into the conduct of such a servant and dismiss him for

misconduct. That being the position of an Archaka the act of his appointment by the trustee is essentially secular. The fact that in some temples the

hereditary principle is followed in making the appointment will not make the successive appointments anything but secular. That after his

appointment the Archaka performs worship is no ground for concluding that the appointment is either a religious practice or a matter of religion.

Their lordships further observed that after the appointment of archaka, that he performs worship is no ground for holding that the appointment is

either a religious practice or a matter of religion. In view of Sub-section (2) of Section 52, as it now stands amended, the choice of the trustee in

the matter of appointment of an archaka is no longer limited by the operation of rule of next-in-line of succession in temples where the usage was to

appoint archaka on hereditary principle. The trustee is not bound to make appointment on the sole ground that the candidate is next-in-line of

succession to the last holder of office. The legislation, in this aspect, does not

interfere with any religious practice or matter of religion and therefore, is not invalid.

8. In another judgment referred to by the counsel for the petitioner in A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, , the

Supreme Court upheld the constitutional validity of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act,

abolishing hereditary rights of archakas, mirazdars and other office holders. The Supreme Court, referring to Seshammal and Others, Vs. State of

Tamil Nadu, , approved and held that though an archaka integrally associates himself with the performance of ceremonial rituals and daily pooja to

the deity, he is a holder of office of priest (archaka) in the temple. So are the other office holders or employees of the temple. The contention that

the prescription of qualification to archaka is arbitrary, unjust and unfair was negated by the Honourable Supreme Court. Their lordships further

observed as follows:

Abolition of hereditary principle on the basis of custom or usage to a holder of an office for continuance in that office is one facet, and

performance of ceremonies, practices, customs of usages is another. Both cannot be mingled in the same water. Both are distinct and separate

from each other. It would, therefore, be incongruous to accept the contention of petitioners that the right to continuance in office on the basis of

custom and usage independently survives. The further contention is that interference with matters based on custom or usage relating to religious

institution as defined in the Section 2 (23) amounts to interference with the freedom of conscience and free practice of religion. Therefore, it is

violative of Article 25(1) and is untenable in law. As held earlier, being secular actions they are not integral part of the religion or religious matters.

9. In the light of the clear pronouncement of the law laid down by the Supreme Court and the enabling provisions under the Act, the Commissioner

is empowered to hold an enquiry as contemplated under the Rules. Hence no grounds are made out to interfere with the impugned notice and

enquiry. The writ petition, therefore, fails and it is accordingly dismissed. No costs.

10. In the light of the orders passed in the main writ petition, no orders are necessary in the petitions filed to implead and vacate the stay. W.M.P.

Nos.10678 and 10679 of 2000 are therefore closed. W.M.P. No.989 of 2000 is dismissed.