
(1973) 07 MAD CK 0012
In the Madras High Court

O. Radhakrishnan and Another and S. Chettiar and Others	APPELLANT
Vs	
Manickam and Others	RESPONDENT

Date of Decision : 30-07-1973

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 64

Citation : (1973) ILR (Mad) 428 : (1974) 2 MLJ 179

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : The Commissioner, Hindu Religious and Charitable Endowments Administration

Department, Madras Vs. Smt. P.S. Sethurathinam, AIR 1999 SC 833 : (1999) 1 JT 231 : (1999) 1 SCALE 233 : (1999) 2 SCC 327 :

(1999) 1 SCR 332 : (1999) 1 UJ 582 : (1999) AIRSCW 460 : (1999) 1 Supreme 275

M.M. Ismail, J.—These two appeals arise out of the judgment and decree of the learned Additional Subordinate Judge, Erode in O.S. No.

144 of 1964. The former appeal has been preferred by defendants 8 and 4 therein, while the latter appeal has been preferred by persons who

were not parties to the proceedings, but who had obtained the permission of this Court to file an appeal against that judgment.

2. The controversy relates to a Mutt called Sri Thiruvallangadu Immudi Agora Dharma Sivachariar Ayira Vysia Mutt, situate at Nerinjipettai,

Bhavani Taluk, Coimbatore District. The history of this suit has been elaborately set out in the judgment of the learned Subordinate Judge of

Erode, dated 24th December, 1958 in O.S. No. 155 of 1956 on his file. The plaintiffs and defendants 2 to 10 in the suit are the disciples of the

said Mutt which is admittedly an ancient institution. The Deputy Commissioner, Hindu Religious and Charitable Endowments, settled a scheme for the administration of the Mutt in O.A. No. 351 of 1951. The matter was taken upon appeal to the Commissioner and then to the Subordinate Judge's Court, Erode. Finally a scheme was settled by the Subordinate Judge's Court, Erode, by judgment and decree, dated 24th December, 1958. Clauses 4 and 6 of this scheme relating to election and representation of the trustees are the important provisions as far as the present appeals are concerned. Clause 4 provided that the committee of trustees shall consist of 12 persons elected from among the disciples residing in the Districts of the Madras State, and of the trustees so elected, one each should represent those residing in each of the eleven districts, and the City of Madras as per Schedule A to the scheme. This clause further provided that should there be no representation from a particular district, the orders of the Commissioner under Hindu Religious and Charitable Endowments Act should be taken as to whether an additional trustee might be selected from another district within three months from the election of the other trustees. Clause 6 provided that the committee of trustees shall be elected at a General Body meeting of the disciples convened at Nerinjipet specially for this purpose and all the disciples shall be entitled to participate and vote at the election of trustees. Subsequent to the settlement of this scheme by the Subordinate Judge's Court on 24th December, 1958, trustees were elected in accordance with the scheme and after the expiry of their term of five years, fresh trustees were to be elected on 25th December, 1964, as per the publication made by the managing trustee. Defendants 2 to 16 in the present suit filed an application, O.A. No. 2 of 1964 before the Commissioner, Hindu Religious and Charitable Endowments, for modification of clause 6. The purport of the modification was that instead of the entire body of disciples meeting at a particular place and electing all the 12 trustees, the disciples of the mutt residing in each district shall separately elect one trustee for the district. The Commissioner, Hindu Religious and Charitable Endowments, by his order, dated 11th August, 1964 in C.A. No. 2 of 1964 allowed this amendment. It is to set aside this order of the Commissioner that" the present suit was instituted by four plaintiffs in a representative capacity-representing all the disciples of the first defendant mutt. Their case, as put forward in the plaint, was

that the order of the Commissioner was liable to be set aside on the ground that it was without jurisdiction and that it had been passed without

giving notice to and without hearing all those disciples who were interested in the mutt. They also put forward the contention that the amendment

prayed for and ordered by the Commissioner will have the effect of producing a spirit of parochialism in the administration of the mutt. However,

defendants 2 to 16 in the suit contested this position and put forward the contention that the amendment was in the interests of the institution and

was validly made. The 17th defendant in the suit, namely, the Commissioner, Hindu Religious and Charitable Endowments, Madras, who passed

the impugned order was subsequently impleaded as a party. He merely stated that he had jurisdiction to pass the order and that he passed the

order after complying with all the requirements prescribed by the Act and the rules made thereunder. In view of these contentions of the parties,

the trial Court framed the following issues:

(1) Whether clause 6 of the scheme modified by the Commissioner, Hindu Religious and Charitable Endowments (Administration) is liable to be

set aside by this Court ?

(2) Whether the modification made by the Commissioner causes irreparable loss or damage to the plaintiff ?

(3) Whether the said modification affects the fundamental rights of the disciples of the mutt ?

(4) Whether the said modification is ultra vires of the powers of the Commissioner?

(5) Whether the Commissioner, Hindu Religious and Charitable Endowments (Administration) is a necessary party ?

(6) Whether the suit as framed is not maintainable ?

(7) To what relief is the plaintiff entitled ?

The following additional issue was framed on 8th February, 1966:

(1) Whether plaintiffs are entitled to sue in representative capacity ?

The trial Court held that the Commissioner had the power to amend the scheme and that therefore the change ordered by the Commissioner

cannot be said to be ultra vires the power of the Commissioner. However, he decreed the suit and set aside the order of the Commissioner on two

grounds. One was that there was absolutely no evidence to show that the Commissioner passed the impugned order after giving notice to all the disciples of the mutt who were interested in the administration of the mutt. He also accepted the case of the plaintiffs in the suit that the amendment would introduce a spirit of parochialism and instead of promoting integration, it will actually lead to disintegration. In view of this conclusion, the learned Additional Subordinate Judge, on 7th November, 1966 decreed O.S. No. 144 of 1964 and set aside the order of the Commissioner referred to already. It is against this judgment and decree of the lower Additional Subordinate Judge the present two appeals have been preferred as pointed out already.

3. We are clearly of the opinion that the appeals have to be dismissed. As we have pointed out already, one of the points urged before the learned

Additional Subordinate Judge was that the order of the Commissioner was ultra vires his powers; in other words, the Commissioner had no

jurisdiction to pass the order in question. While agreeing with the conclusion of the learned Additional Subordinate Judge that the impugned order

of the Commissioner has to be set aside as it was passed without giving any opportunity whatever to the affected parties, we are further of the view

that the Commissioner had no jurisdiction whatever to pass the impugned order in question and the learned Subordinate Judge really erred in

holding that the Commissioner had the jurisdiction. We have come to this conclusion for three different reasons. Each one of them is adequate to

nullify the order of the Commissioner.

4. Before we indicate our reasons for the conclusion we have arrived it is desirable to set out the relevant statutory provisions themselves. Section

64 of the Tamil Nadu Hindu Religious Charitable and Endowments Act (XXII of 1959) hereinafter referred to as the Act provides for settlement

of schemes and modification or cancellation of schemes by the Deputy Commissioner in respect of a temple or a specific endowment attached to a

temple. Similarly Section 65 of the Act provides for settlement or modification or cancellation of schemes by the Commissioner in respect of a mutt

or a specific endowment attached to a mutt. Section 65 (1) which deals with the settlement of a scheme for the first time by the Commissioner is as

follows:

65 (1). When the Commissioner has reason to believe that in the interests of the proper administration of a math or a specific endowment attached

to a math, a scheme should be settled for the math or the specific endowment attached to a math or when not less than five persons having interest

make an application in writing, stating that in the interests of the proper administration of the math or the specific endowment attached to the math,

a scheme should be settled for it, the Commissioner shall consult in the prescribed manner the trustee and the persons having interest, and if, after

such consultation, he is satisfied that it is necessary or desirable to do so, he shall by order, settle a scheme of administration for the math or the

specific endowment attached to the math.

Section 65 (4) (a) of the Act deals with the cancellation or modification of a scheme and it is this power the Commissioner has purported to

exercise in the present case. Section 65 (4) (a) along with the proviso is as follows:

65 (4) (a).--The Commissioner may, at any time after consulting the trustee by order, modify or cancel any scheme in respect of a math or a

specific endowment attached to a math and in force and settled under Sub-section (1) or any scheme in force settled or modified by the Board

under the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927), or deemed to have been settled under that Act or any

scheme in force settled or modified by the Commissioner under this Act or any scheme in force settled or modified by the Court in a suit under

Sub-section (1) of Section 70 or an appeal under Sub-section (2) of that Section or any such scheme in force deemed to have been settled or

modified by the Court under clause (a) of Sub-section (2) of Section 118: Provided that such cancellation or modification of a scheme in force

settled or modified by the Court in a suit under Sub-section (1) of Section 70 or on an appeal under Sub-section (2) of that section or of a scheme

in force deemed to have been settled or modified by the Court under clause (a) of subsection (2) of Section 118 shall be made only subject to

such conditions and restrictions as may be prescribed.

5. With reference to these statutory provisions, rules have been framed by the Government by G. O. No. 4851, Revenue, dated 26th November,

1960. Rule 2 deals with the procedure to be followed by the Deputy

Commissioner u/s 64 of the Act. Rule 3 also applies to the same case. Rules

5 and 6 alone are relevant in this context, with reference to the power of the Commissioner u/s 65 of the Act. The said rules are as follows:

5. The consultation required under Sub-sections (1), 4 (a) and 4 (b) of Section 65 shall be made in the following manner

(a) When the Commissioner proposes on his own motion to take action under Sub-section (1) or 4 (a) or 4 (b) of Section 65 or where an

application under Sub-section (1) is received by him, he shall give notice of his proposal or of the application, as the case may be, to the trustee or

the trustees and the persons having interest calling upon them to submit any representations they may wish to make before a date to be specified in

such notice which shall not be less than two months from the date of its issue.

(b) If, after considering the objections or suggestions, if any, received by him, he has reason to believe that a scheme should be settled, modified or

cancelled, he shall give notice to the trustee or the trustees and the persons having interest, of his intention to settle, modify or cancel a scheme of

administration for the math or a specific endowment attached to a math and call upon them to submit in writing any objections or suggestions they

may wish to make before the date specified in such notice for an enquiry.

(c) The notice under sub-rules (a) and (b) shall be sent by registered post to the trustee or the trustees concerned. A copy of the notice shall be

affixed on the notice board or front door of the math and in the case of a specific endowment attached to a math on the notice board or front door

of the math to which the specific endowment is attached, on the notice board of the office of the Deputy Commissioner and on the notice board of

the office of the Assistant Commissioner, within whose division the math is situate, and on the notice board of the municipal council including the

Corporation of Madras or village chavadi concerned. Such affixture shall be deemed to be sufficient intimation to persons having interest. All

representations submitted in time by the trustee or the trustees and the persons having interest shall be taken into consideration by the

Commissioner in settling, modifying or cancelling the scheme.

6. While considering the modification or cancellation of a scheme in force settled or modified by the Court in a suit under Sub-section (1) of

Section 70 or on an appeal under Sub-section (2) of that section or of a scheme

in force deemed to have been settled or modified by the Court

under clause (a) of Sub-section (2) of Section 118, the Commissioner shall give notice of the modifications or reasons for the cancellation

proposed by him to the trustee or the trustees and the persons having interest calling upon them to submit any representations they may wish to

make before a date to be specified in such notice which shall not be less than two months.

A scrutiny of the language of the statutory provisions will clearly show that the Commissioner has no power to pass the impugned order for the

following reasons:

(1) Clause (a) of Sub-section (4) of Section 65 does not enable the Commissioner to take action under that Section on the application of any particular party.

(2) The proviso to Section 65 (4; (a) contemplates the Commissioner exercising his powers under clause (a) of subsection (4) of Section 65 only

subject to such conditions and restrictions as may be prescribed by the Government and in this case admittedly to such conditions and restrictions

have been prescribed by the Government and therefore the Commissioner is incapable of exercising his powers under clause (a) of Sub-section (4;

of Section 65 in respect of a scheme covered by the said proviso in the absence of any such conditions and restrictions prescribed by the

Government.

(3) As the language of clause (a) of Sub-section (4) of Section 6 stands, the Commissioner has no power to modify a scheme settled by a Court

under the Madras Hindu Religious and Charitable Endowments Act (XIX of 1951).

7. As we have pointed out already, any one of the above grounds will be sufficient to invalidate and nullify the impugned order passed by the

Commissioner, since each one of them goes to the root of the jurisdiction of the Commissioner. As far as the first ground is concerned, the contrast

between the language of Section 65 (1) and Section 65 (4) (a) will clearly show that either deliberately or by oversight no provision whatever has

been made in clause (a) of Sub-section (4) of Section 65 for the Commissioner taking action on an application of a particular party. Mr. R.C.

Rajan, learned Counsel for the appellants, repeatedly contended that whenever power has been conferred in as wide terms as has been done in

clause (a) of sub Section (4; of Section 65, it is reasonable to construe the provision so as to imply that the Commissioner can act either suo motu

or on application of parties. We are unable to accept this argument for more than one reason. If the power of the Commissioner has been

expressed in wide terms in an independent provision, there may be some scope for the advancement of this argument. As a matter of fact, in this

very Act itself there are other provisions from which such a power can be inferred. There is Section 21 of the Act conferring on the Commissioner

the power of superintendence. Sub-section (1) of that section states:

The Commissioner may call for and examine the record of any Deputy or Assistant Commissioner, of any Area Committee, or of any trustee of a

religious institution other than a math or a specific endowment attached to a math in respect of any proceeding under this Act (not being a

proceeding in respect of which a suit or an appeal to a Court is provided by this Act), to satisfy himself as to the regularity of such proceeding or

the correctness, legality or propriety of any decision or order passed therein.

The power has been couched in the most general terms as is generally done with regard to an authority who exercises general powers of

superintendence. Consequently, simply as a matter of construction, though Sub-section (1) of Section 21 of the Act does not expressly state

whether the power should be exercised sua motu or on application it can be easily held that the power can be exercised in both the contingencies.

That is made clear by Sub-section (7) of that section itself which states that every application to the Commissioner for the exercise of his powers

under this section shall be preferred within three months from the date on which the order or proceeding to which the application relates was

communicated to the applicant. Similar is the language contained in Section 114 of the Act dealing with the power of the Government to call for

and examine the record of the Commissioner or any Deputy Commissioner or Assistant Commissioner or any trustee for the purpose of satisfying

itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein. In these provisions the

statute itself has used different language, when a wide power of superintendence has been conferred on a designated authority and the manner of

exercise of that power has to be inferred from the width of the language itself.

Notwithstanding the wide language, each one of the above two sections actually and expressly refers to the concerned authority exercising his power, also an application made by parties.

8. As against this, the contrast between the language in Section 65 (1) and 65 (4) (a) is significant. In Section 65 (1), the statute expressly

contemplates not less than five persons having interest in the math or the specific endowment attached to a math making an application in writing

stating that in the interests of the proper administration of the math or the specific endowment attached to the math, a scheme should be settled for

it. On the other hand, as far as clause (a) of Sub-section (4) of Section 65 is concerned, a similar provision is absent. In view of this contrast

between subsection (1) and clause (a) of Sub-section (4) occurring in the same section, it is not possible for us to hold that the power under the

latter provision can be exercised on application by somebody else. Even assuming that it is open to us to construe the scope of the power in clause

(a) of Sub-section (4) of Section 65 as one capable of being exercised either sua motu or on application, a question may possibly arise, as to by

whom an application should be made. Are we to import wholesale into clause (a) of Sub-section (4), the provision contained in Sub-section (1),

namely, that an application should be made by not less than five persons having interest in the institution concerned? In the absence of a specific

provision to that effect, we are unable to introduce into clause (a) of Sub-section (4) of Section 65, the contingency as well as the restriction

contemplated in Sub-section (1) of Section 65. It may be that if the attention of the Legislature was drawn to this aspect, the Legislature might have

made a different provision in clause (a) of Sub-section (4) of Section 65. It might have insisted on an application being made by not less than five

persons having interest in the institution or it might have provided that an application for cancellation or modification of a scheme as distinct from

the one for settlement of a scheme, should be made by any person interested in the math or the specific endowment attached to the math. In the

absence of express provision, it will not be open to the Court to speculate upon as to what provision the Legislature should have made, if the

attention of the legislature was drawn to this aspect of the matter.

9. Mr. R. G. Rajan drew our attention to the schedule contained in the Act

relating to the Court-fee payable under the Act with reference to Section 104 of the Act. The relevant entry in this schedule is as follows:

Section Description of document Proper fee

65 (4) (a) Application to modify

or cancel scheme

settled under Section

65 (1) or deemed to

have been so settled. Rs. 25.

From this Mr. Rajan wanted us to infer that the Legislature contemplated an application u/s 65 (4) (a) of the Act. We are unable to accept this

argument. Simply because the schedule included an entry as referred to above, on the assumption that the Legislature has already provided for in

Section 65 (4) (a) of the Act for the Commissioner exercising his power on an application, we cannot come to the conclusion that Section 65 (4)

(a) itself confers power on the Commissioner to take action on .application. We have already indicated that one great difficulty in accepting this

argument will be as to the competency or eligibility of the persons who can prefer such an application u/s 65 (4) (a) of the Act. As a matter of fact,

the entry immediately preceding the above entry in the schedule is one relating to Section 65 (1) and it is as follows:

Section Description of document Proper fee

65 (1) Application for settle-

ment of scheme by the

Commissioner. Rs. 50.

This entry provides for payment of Court-fee of Rs. 50 while the entry relating to Section 65 (4) (a) provides for payment of Court-fee of Rs. 25.

Consequently, with reference to these two entries, it is clear that the Legislature itself intended to treat these two differently and not on the same

footing. This is yet another reason for not importing wholesale into clause (a) of Sub-section (4) of Section 65, the provisions contained in Sub-

section (1) of Section 65 of the Act.

10. As against this, we can also see that the rules referred to already merely proceed on the basis of there being no provision for anybody applying

u/s 65 (4) (a) of the Act. The very language of the rules refers to an application only u/s 65 (1) and not to an application u/s 65 (4) (a) of the Act,

even though the rules cover the matters dealt with u/s 65 (1) as well as u/s 65 (4) of the Act. We may also point out in this connection that Rule 6

which we have extracted corresponds to Rule 3 dealing with proceedings before the Deputy Commissioner u/s 64 of the Act, and the said rule,

whether it is Rule 6 or Rule 3, is really redundant and does not serve any purpose, whatever. Except for referring to a scheme settled or modified

by a Court, these rules do not make any provision other than what is already contained in Rules 5 and 2 respectively. However, that is beside the

point.

11. For the reasons indicated by us, we are of the opinion that as the, language in clause (a) of sub Section (4) of Section 65 stands, the

Commissioner has no power to modify or cancel a scheme on an application made by any person and the power conferred on the Commissioner

has to be exercised suo motu only.

12. As far as the second ground is concerned, that flows directly from the proviso to clause (a) of Sub-section (4) of Section 65 which we have

already extracted. The said proviso expressly states that the cancellation or modification shall be made only subject to such conditions and

restrictions as may be prescribed. We are clearly of the opinion that the use of the word, "only" has qualified and restricted the exercise of the

power by the Commissioner and consequently so long as conditions and restrictions are not prescribed, the Commissioner cannot exercise the

power. One of the meanings of the word, "only" as contained in the Shorter Oxford English Dictionary is, "as opposed to any other" and that

meaning alone is relevant in the present context. If that is so, so long as such conditions or restrictions have not been prescribed by the

Government, the Commissioner cannot exercise the power conferred on him under clause (a) of sub Section (4) of Section 65. This specific

provision contained in the enactment is easily understandable. The Commissioner is a creature of the statute and he is exercising the powers and

functions conferred upon him. Section 9 of the Act deals with the appointment of the Commissioner. Clause (a) of Sub-section (2) of that section

provides that the appointment to the post of Commissioner shall be (i) by

transfer from among the members of the Madras State Higher Judicial Service or of the Madras State Judicial Service or of any other service, or (ii) by promotion from Deputy Commissioner, or (iii) by direct recruitment. Similarly, clause (b) of Sub-section (2) deals with the appointment of Deputy Commissioners and it provides that the appointment to the post of Deputy Commissioner shall be (i) by transfer from among the members of the Madras State Judicial Service or of any other service, or (ii) by promotion from Assistant Commissioners, or (iii) by direct recruitment, or (iv) by agreement or contract. We are referring to the appointment of Deputy Commissioner for the simple reason that u/s 64, the Deputy Commissioner is exercising the very same powers with reference to a temple and a specific endowment attached to a temple, as the Commissioner is exercising powers u/s 65 with reference to a math or specific endowment attached to a math. Consequently, in the statutory provisions themselves, there is no minimum qualification prescribed for the Commissioner or the Deputy Commissioner. Under these circumstances, it is natural for the Legislature to be anxious about the exercise of the powers of the Commissioner and the Deputy Commissioner in respect of schemes settled or modified by the Court, being controlled and guided. Schemes settled or modified by a Court may mean any scheme settled by a subordinate Court upto the Supreme Court, which is the highest Court in the country. It could not have been in the contemplation of the Legislature to give a carte blanche to a Commissioner or Deputy Commissioner under the Act to deal with a scheme settled by such a Court in any manner he pleases. As a matter of fact, the power conferred by clause (a) of Sub-section (4) of Section 65 not merely deals with the power to modify a scheme but even to cancel a scheme. The exercise of the power to cancel a scheme settled by a Court will amount to the reversal of a decree of the Court itself. The Legislature could not have lightly contemplated an officer functioning under the Act reversing a decree of the highest Court of the land and it is in view of this alone,, the Legislature has provided for specific restrictions and guidelines for the exercise of the power by the Commissioner with reference to a scheme settled by a Court to be prescribed by indicating the circumstances under which alone the Commissioner will be justified in either modifying or cancelling a scheme settled

or modified by a Court. That we are pointing out with regard to the Commissioner will apply to the Deputy Commissioner also u/s 64 (5) (a) of the Act. Therefore, we are clearly of the opinion that it was the definite intention of the Legislature that the power of the Commissioner u/s 65 (4) (a) of the Act should be a restricted power and should not be an unguided power and that power can be exercised only under the conditions and restrictions prescribed by the Government which would certainly take note of the fact that the Commissioner may be dealing with or interfering with a scheme settled by the highest Court of the land. Therefore, simply as a matter of construction of the specific statutory-provision contained in the Act, against the background indicated above, we have come to the conclusion that the power conferred upon the Commissioner having regard to the proviso to Section 65 (4) (a) , cannot be exercised by him, unless conditions and restrictions have been prescribed in this behalf for the purpose in question. We are fortified in our conclusion by certain decided cases as well.

13. The decision in Parankusam Rangacharyulu and ors v. Pernamitta Venkatanarasimhayya, Trustee of Sri Chenna Kesavaswami Temple including the minor shrine Sri Ranganadha swami situated at Parankusam Rangacharyulu and Others Vs. Pernamitta Venkatanarasimhayya, Trustee of Sri Chenna Kesavaswami Temple including the Shrine Sri Ranganadhaswami and Others, dealt with a case falling within the scope of Section 78 of the Madras Hindu Religious Endowments Act (II of 1927. That section provided for a trustee approaching the Court for recovery of possession of the properties belonging to the temple and the applicant for the purpose producing an order of appointment. Where the application is for possession of the property, he will have to produce a certificate issued by the Hindu Religious and Charitable Endowments Board in such manner as may be prescribed setting forth that the property in question belongs to the math, temple or specific endowment concerned. In the case which came up before this Court, the Government who had to prescribe the form of the certificate, had not made rules prescribing the said form.

Consequently, the Board gave its certificate on a form evolved by itself and when the trustee applied for delivery of possession on production of

such a certificate, this Court came to the conclusion that the power of the Board to grant a certificate could not be exercised without the form being

prescribed therefor. The Bench of this Court held:

The Board has no power of issuing a certificate by itself either under this section or any other provision of the Act. The power is to issue a

certificate in the manner as may be prescribed and not the power to issue a certificate, the form of which may or may not be prescribed by the

Government. The non-exercise of the power of prescribing the form by the provincial Government would not confer such power upon the Board

as was contended on behalf of the respondents. The Board has no rule making power and cannot prescribe the form. No hardship is caused by

the delay on the part of the Provincial Government in framing the rules, as it is open to the trustees to recover possession by suit instead of an

application u/s 78.

The Bench itself considered a decision of this Court in *The Madras and Southern Maharatta Railway Company Limited Vs. The Municipal*

Council, Bezwada, and the judgment of the Privy Council on appeal therefrom in *S. M. Railway Co., Ltd. v. Bezwada Municipality* and

distinguished the same from the case before them.

14. The decision of the Supreme Court in *Gujarat Electricity Board Vs. Girdharlal Motilal and Another*, dealt with the scope of Section 6(1) (a) of

the Electricity Act, 1910 as amended in 1959. That section provided:

Where a license has been granted to any person not being a local authority, the State Electricity Board shall

(a) in the case of a license granted before the commencement of the Indian Electricity (Amendment) Act, 1959 on the expiration of each such

period as is specified in the licence..... have the option of purchasing the undertaking and such option shall be exercised by the State Electricity

Board serving upon the licensee a notice in writing of not less than one year requiring the licensee to sell the undertaking to it at the expiry of the

relevant period referred to in this subsection.

In that particular case, the notice issued by the Mate Electricity Board was in the following terms:

Dear Sir,

In exercise of the powers conferred on the Gujarat Electricity Board by virtue of Section 71 of the Electricity (Supply) Act, 1948, read together

with Section 6 of the Indian Electricity Act, 1910, as amended by the Indian Electricity (Amendment) Act, 1959 (XXXII of 1959) this is to give

you notice that the Gujarat Electricity Board has decided to exercise and shall exercise the option of purchasing your undertaking on 3rd January,

1963, the date on which the license granted to you by the Government of Baroda expires. The receipt of this notice may please be

acknowledged.

Yours faithfully,

Sd. Secretary the Gujarat Electricity Board.

The Supreme Court held:

These provisions confer a power on the State Electricity Board to purchase the property of the licensee but that right can be exercised only in the

manner provided in the Act and not in any other way. It must be remembered that the provisions in question empower the State Electricity Board

to interfere with the property rights of the licensee. Therefore such a power will have to be strictly construed. The legislature has prescribed a

mode for the exercising of that power and hence that power can be exercised only in that manner and in no other manner. See *Nazir Ahmad v.*

King Emperor 71 M.L.J. 476 : 44 L.W. 583 : 63 I.A. 372 : AIR 1936 P.C 853 and *Ballabhdas Agarwala Vs. J.C. Chakravarty*, . Before the

option to purchase the undertaking can be exercised, the State Electricity Board must call upon the licensee by means of a notice in writing within

the period mentioned in Section 6 (1) to sell the undertaking to it on the expiration of the period for which license was given.

The impugned notice does not require the licensee to sell the undertaking. It merely notifies the respondent that the appellant Board has decided to

exercise and shall exercise the option of purchasing the respondents' undertaking on 3rd January, 1963, the date on which the licence granted to

him by the Government of Baroda expired.

The decision of the Supreme Court in *Narbada Prasad Vs. Chhaganlal and Others*, , dealt with the provisions contained in Section 33 (5) of the

Representation of the People Act, 1951. That section required that where the candidate is an elector of a different constituency, a copy of the

electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed

along with the nomination paper, be produced before the returning officer at the time of scrutiny. In that case the candidate did not produce a copy

of the electoral roll of that constituency on the date of the nomination; nor did he produce a copy on the date of scrutiny. However, he produced a

certificate from an officer, who it is not proved to the satisfaction of the Court, had the authority to issue a certified copy of the electoral roll. He

also added an affidavit of his own, in which the gist of the entry was given. The Supreme Court held that there was no compliance with the

provision of Section 33 (5) of the Representation of the People Act and there was no power in the Court to dispense with this requirement. In that

context, the Supreme Court observed:

It is a well-understood rule of law that if a thing is to be done in a particular manner it must be done in that manner or not at all. Other modes of

compliance are excluded.

The same view is reiterated by the Supreme Court in *State of Gujarat Vs. Shantilal Mangaldas and Others*, wherein it stated that it is a settled rule

of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not

at all.

15. On the other side, there are certain decisions.

16. *Nemi Chand v. Secretary of State for India* I.L.R.(1907)Cal. 511, dealt with the scope of the power of the Collector of Customs to detain goods

imported contrary to the provisions of the Customs Act. The argument that was advanced before the Court was that the Collector had no power

to detain the goods, as no regulations had been framed by the Governor-General in Council under Sub-section (2) of Section 19-A of the Act.

The learned Judges held that the power of detention was clearly implied by Section 19-A of the Act, apart from the positive words of Section 18

that no goods of the class specified were to be brought into British India and that consequently the enabling power given to the Governor-General-

in-Council to frame regulations cannot override the prohibiting language of Section 18 or the implied power of detention u/s 19-A.

17. To the same effect, with regard to the same provisions, is the observation of this Court in *Collector of Customs, Madras Vs. Lala*

Gopikissen Gokuldass, . The learned Judges stated:

It is admitted that no regulations have been framed under this enactment touching the manner of and procedure for confiscation and the argument of

Mr. Gopalaratnam is that the power conferred by Sections 19, 167 (8) and 183 of the Act cannot be exercised except in conformity with the

regulations to be framed and in their absence cannot be exercised at all. We are unable to accept this contention. The power in Section 19-A (a) is

an enabling power and the framing of the regulations cannot be read as a condition precedent to bringing into operation the powers and authority of

the Customs Officers under Sections 19, 167 (8) and 183. Of course if regulations have been framed the detention and confiscation would have to

be effected in conformity with them but it is not as if these regulations bring into operation the power to detain or to confiscate if there is a violation

of an import control notification.

18. The Supreme Court in the *The Dargah Committee, Ajmer Vs. State of Rajasthan*, had to deal with a similar argument, with reference to the

provisions contained in Section 234 of *Ajmer Merwara Municipalities Regulation, 1925*. The point is dealt with in paragraph 7 of the judgment and

from that it appears that rules had not been framed under the Regulations and so no form had been prescribed for making a demand u/s 222 (1).

The argument before the Supreme Court was that the proceedings u/s 234 taken against the appellant therein were incompetent because a demand

had not been made by the second respondent on the appellant in the manner prescribed by rule as required by Section 234 and unless rules were

framed and the form of notice was prescribed for making a demand u/s 222 (1) no demand can be said to have been made in the manner

prescribed by rules and so an application cannot be made u/s 234. The Court held that if the rules are not prescribed then all that can be said is

that there is no form prescribed for issuing a demand notice and that does; not mean that the statutory power conferred on the Committee by

Section 222 (1) to make a demand is unenforceable. The exact language of the relevant provisions is not extracted in the judgment of the Court.

19. The last of the decisions to which our attention was drawn is that of a Bench of this Court in *S. Murugesan v. The Collector of North Arcot*

(Inspector of Panchayat), *Vellore-cum-Election authority, North Arcot and Ors.* (1966) 2 M.L.J. 290. That decision dealt with a case u/s 16 of

the Madras Panchayats Act, 1958, which was as follows:

For the purpose of electing members; to a panchayat, the Inspector shall after consulting the panchayat, if any, by notification, divide the village or

town into wards and determine the number of members to be returned by each ward in accordance with such scale as may be prescribed.

In that case the argument was that since no rules were framed prescribing the scale for the representation of the wards, the Inspector could not

exercise his power at all, for dividing the village or town into wards and determining the number of members to be returned by each ward. This

Court held that the power is an enabling one and the fact that the Government had not framed any rule did not take away the power the Inspector

had under the specific provisions contained in the Act.

20. In our opinion, as far as the present case is concerned, the statute has expressly contemplated a particular mode for the exercise of the power

by the Commissioner u/s 65 (4) (a). So long as that mode has not been prescribed, the power itself is incapable of being exercised. Having regard

to the language of the proviso and the object sought to be achieved by it, we are of the opinion that the prescription of conditions and restrictions is

a condition precedent to the exercise of the power itself by the Commissioner. As a matter of fact, we may go a step further and state that as far as

the proviso to clause (a) of Sub-section (4) of Section 65 is concerned, it does not provide merely a mode of exercising the power, but it really

constitutes a restriction or circumscription on the exercise of the power itself and therefore without there being the prescription therefore the power

itself is incapable of being exercised. Consequently, we are of the opinion that so long as conditions and restrictions subject to which alone the

Commissioner can exercise his power have not been prescribed, the Commissioner cannot exercise the power conferred on him under clause (a)

of Sub-section (4) of Section 65 of the Act.

21. As far as the third ground is concerned, we shall have now to extract clause (a) of Section 118 (2) of the Act which is as follows:

118 (2) (a). Notwithstanding the repeal of the said Act by the Hindu Religious and Charitable Endowments Act, 1951 by Sub-section (1), all rules

made, or deemed to have been made, notifications or certificates issued or deemed to have been issued, orders passed or deemed to have been

passed, decisions made or deemed to have been made, proceedings or action taken or deemed to have been taken, schemes settled or deemed to

have been settled and things done or deemed to have been done by the Government, the Commissioner, a Deputy Commissioner, an Area

Committee or an Assistant Commissioner under the said Act, shall, in so far as they are not inconsistent with this Act, be deemed to have been

made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of this Act, and shall have effect

accordingly.

It will be seen immediately that clause (a) of Section 118 (2) makes elaborate provisions with regard to the rules, notifications, certificates, orders,

decisions, proceedings, and schemes that were made, issued, passed, taken, or settled under the provisions of the Madras Hindu Religious and

Charitable Endowments Act, 1951. The most significant thing to be noticed in clause (a) of Section 118 (2) is that it makes no reference whatever

to schemes settled or deemed to have been settled by a Court. However, under an erroneous assumption that Section 118 (2) (a) dealt with

schemes settled or modified or deemed to have been settled or modified by a Court, Section 65 (4) (a) proceeded to confer power on the

Commissioner to cancel or modify such scheme itself. A reading of Section 65 (4) (a) will give an impression that the Legislature assumed that

Section 118 (2) (a) dealt with a scheme settled or modified by a Court. On the other hand, actually Section 118 (2) (a) does not deal with a

scheme settled or modified by a Court at all. Under such circumstances, the question for consideration is, whether it is open to this Court to supply

the omission which the Legislature has made in Section 118 (2) (a) of the Act. We are clearly of the opinion that it is not open to this Court to

supply the omission and thereby hold that the Commissioner has got power to cancel or modify even a scheme settled or modified by a Court

under the earlier Act.

22. The general rule of construction in this behalf has been stated by Maxwell on the Interpretation of Statutes, Twelfth Edition, at page 33 as

follows:

It is corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to

justify the inference that the legislature intended something which it omitted to express. Lord Mersey said: "It is a wrong thing to read into an Act of

Parliament words which are not there., and in the absence of clear necessity it is a wrong thing to do." "We are not entitled ", said Lord Loreburn,

L.C., to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself." A case not provided

for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in

consequence to have been unintentional.

The following passage in Craies on Statute Law, Seventh Edition, at pages 70-71, will indicate the position in greater detail:

The Judges may not wrest the language of Parliament even to avoid an obvious mischiefIn *Crawford v. Spooner* (1846) 6 Moore P. C.

1, the Judicial Committee said:

"We cannot aid the legislature's defective phrasing of an Act, we cannot add and amend, and, by construction, make up deficiencies which are left

there." In 1951, in *Magor and St. Mellons R.D.C v. Newport Corporation* (1952) A.C. 189 it was held by the House of Lords that a Court has

no power to fill any gaps disclosed in an Act. To do so would be to usurp the function of the legislature.

23. In other words, the language of Acts of Parliament, and more especially of modern Acts, must neither be extended beyond its natural and

proper limits, in order to supply omissions or defects, nor strained to meet the justice of an individual case. "If", said Lord Brougham, in *Gwynne v.*

Burnell (1840) Cl. & F. 572, we depart from the plain and obvious meaning on account of such views (as those pressed in argument on 43 Geo.,

3 c. 99), we do not in truth construe the Act, but alter it. We add words to it, or vary the words in which its provisions are couched. We supply a

defect which the legislature could easily have supplied, and are making the law, not interpreting it. This becomes peculiarly improper in dealing with

a modern statute, because the extreme conciseness of the ancient statutes was the only ground for the sort of legislative interpretation frequently put

upon their words by the Judges. The prolixity of modern statutes, so very remarkable of late, affords no grounds to justify such a sort of

interpretation."

24. Referring to the decision in *Du Pont v. Mills* Dela 196 at 1.168, Crawford on Statutory Construction, 1940 Edition, at page 272 states the rule

in the following terms:

While the Court may interpret doubtful or obscure phrases and obscure language in a statute so as to give effect to the presumed intention of the

legislature, and to carry out what appears to be the general policy of the law, it cannot, by construction, cure a *casus omissus*, however just and

desirable it may be to supply the omitted provision; and it will make no difference if it appears that the omission on the part of the legislature was a

mere oversight, and that, without doubt, the Act would have been drawn otherwise, if the attention of the legislature had been drawn to the

oversight at the time the Act was under discussion.

25. In our opinion, the above general principles clearly lead us to hold that it is not open to this Court to supply the omission in Section 118 (2) (0)

of the Act so as to give effect to what is found in Section 65 (A) (a) of the Act. As a matter of fact, a striking illustration similar to the one in the

present case has been noticed by Maxwell himself at page 34 (Maxwell on Interpretation of Statutes-- Twelfth Edition in the following passage:

Section 11 of the Habitual, Criminal's Act, 1869, in enacting that upon a trial for receiving stolen goods a previous conviction for any offence

involving dishonesty should be admissible against the prisoner as evidence of his having received with guilty knowledge, provided that notice were

given to him that the conviction would be put in evidence and that he would be deemed to have known that the goods were stolen until he proved

the contrary," omitted, however, to enact substantively that this effect should be given to the conviction. It was held that the omission could not be

supplied.

The Court of Appeal in *O'Conner v. Isaacs* (1956) 2 Q. B. 288 was considering the provisions contained in Section 2 of the Justices Protection

Act, 1848. The proviso to that section was:

Provided nevertheless, that no such action shall be brought for any thing done under such conviction or order until after such conviction shall have

been quashed, either upon appeal, or upon application to Her Majesty's Court of Queen's Bench.

26. It will be noticed that the words," or order " do not find a place after the

word "conviction", when that word is used for the second time. An argument was advanced before the Court of Appeal that the Court must presume that the legislature intended to include the words, "or order" after the word, "conviction for the second time also" and in support of that argument, three reasons were strongly pressed on the Court. The first was, later in the Section there appeared the words "until after such conviction or order shall have been so quashed as aforesaid", consequently the legislature must be deemed to have intended to use the words, "or order" after the word, "conviction" in this place also. The second argument was, the section read very strangely if the words, "or order" were not inserted after "conviction" in the only place in the section in which they were not found together. The third argument was, when a similar act was passed for Ireland in 1849, the section included the words "or order" in the relevant place. However, the Court of Appeal rejected all these contentions and refused to supply the omission.

27. In *Underhill v. Longridge* (1850) 29 L.J. N. S. C. L. 65, the Court declined to supply certain words by implication. The case turned on Section 9 of Coal Mines Act of 1855, which enacted that if loss of life to any person employed in a coal mine occurs by reason of any accident within such coal mine, or if any serious personal injury arises from explosion therein, the owner of such mine shall, within twenty-four hours next after such loss of life, send notice of such accident etc., or be liable to a penalty. An accident having occurred which caused serious personal injury, but no loss of life, it was contended that the owner of the mine ought not to have sent a notice of the accident, for it was argued that it was quite clear that there was an accidental omission after the words "such loss of life", and that the legislature must have intended to insert the words "or such serious personal injury", otherwise the words "or if any serious personal injury arises from explosion therein" were wholly inoperative. The Court, however, declined to imply that these words had been omitted by accident and the Court stated, "we cannot take upon ourselves the office of the legislature."

28. Under these circumstances, we are clearly of the opinion that even if the omission to include a scheme settled by Court in Section 118 (2) (a) of the Act was by oversight, we cannot supply that omission and that is a defect

for the legislature to rectify.

29. We may also point out that it can be contended that as the language now stands, all the schemes settled or modified or deemed to have been

settled or modified under the provisions of the Hindu Religious and Charitable Endowments Act, 1951 fall outside the scope of Section 65 (4) (a),

because that clause refers to "" schemes deemed to have been settled or modified by the Court under clause (a) of Sub-section (2) of Section 118

and consequently excludes schemes deemed to have been settled or modified by other authorities u/s 118 (2) (a) and at the same time does not

take in schemes deemed to have been settled or modified by a Court since Section 118 (2) (a) does not cover such schemes.

30. We may also notice here that the above conclusion of ours on the power of the Commissioner u/s 65 (4) (a) of the Act does not in any way

cause any public inconvenience, because with reference to a scheme settled or modified by a Court, it is always open to the affected parties to

approach the Court for any fresh modification of the scheme.

31. Therefore, looked at from any point of view, we are clearly of the opinion that the Commissioner had no jurisdiction to modify the scheme

settled by the Subordinate Judge's Court, Erode, in O.A. No. 2 of 1966 on his file.

32. We have already pointed out that the trial Court itself came to the conclusion that the order of the Commissioner is vitiated in so far as the

Commissioner has not given notice to any of the affected parties. We have already extracted the rules in this behalf providing for the issue of

notice, and those rules, as we have indicated already, cover only cases where the Commissioner takes action suo motu. Even with regard to the

requirements of the rules that are actually in existence it was admitted before the trial Court that no such notice, as contemplated therein was given.

In paragraph 11 of its judgment, the trial Court has considered this question. Admittedly in O.A. No. 2 of 1964, namely, application for

amendment of the scheme made before the Commissioner, the respondents were only the mutt, as represented by the managing trustee and the

President of the Tamil Nadu Arya Vysia Sangham, Madras. There is absolutely nothing to show that the plaintiffs in the suit, who were admittedly

the disciples of the mutt took any part in the proceedings. According to P.W. 1, he knew of the amendment only at the time of election and there

was no general body meeting before the application was filed before the Commissioner for amendment and therefore the consent of the general body was not taken. Equally no opportunity or notice was given to all the disciples of the mutt, either before the filing of the suit or before the filing of the application or after the filing of the application. The evidence let in on behalf of the plaintiffs as to the absence of any notice to any of the disciples was not countered by any evidence to the contrary or in the cross-examination. As a matter of fact, the Commissioner himself was not able to produce any materials before the Court to show that he gave notice at least before taking action on the application, as contemplated by Rule 5, which we have extracted already. Consequently, the conclusion of the trial Court that the order of the Commissioner is vitiated for failure to issue notice to the persons affected is unassailable.

33. Since, we are holding that the commissioner had no jurisdiction to modify the scheme as prayed for by the appellants herein, we are not expressing any opinion on the merits of the actual order of modification passed by the Commissioner.

34. Under these circumstances, there are no merits in the appeals and they are dismissed. There will be no order as to costs.