
(1967) 07 MAD CK 0039
In the Madras High Court

P. Arunachalam

APPELLANT

Vs

The Deputy Commissioner, H.R. and C.E. (Administration)
Department and Others

RESPONDENT

Date of Decision : 04-07-1967

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 23

Citation : (1967) 80 LW 541 : (1967) 2 MLJ 428

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—This petition is filed by the Chairman of the Board of Trustees of Sri Kallalagar Devasthanam, Alagarkoil, Madurai District, for the issue of a Writ of certiorari calling for the records of the proceedings of the Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madurai, dismissing him from the office of trusteeship.

2. It is customary for the pilgrims who have taken a vow to offer mudi kanikkai to the Kallalagar temple. The Devasthanam was holding auctions and granting a lease of the right to remove the human hair collected at the temple to the highest bidder. For the purpose of exporting human hair, the State Trading Corporation started purchasing human hair from several Devasthanams. The State Trading Corporation agreed with the Devasthanam for the purchase of the human hair without any auction being conducted by the Devasthanam. In August, 1966, the Devasthanam had some quantity of human hair with them. The Executive Officer of the Devasthanam wrote to the State Trading Corporation that an appreciable quantity of human hair had been collected in the Devasthanam, that it will be difficult for the Devasthanam to keep a watch over the same for a long time as it will facilitate pilferage and that if the State Trading Corporation was desirous of purchasing the hair, they may collect it at an early date. The Executive Officer gave a telegram to the State Trading Corporation on 1st August, 1966 and also wrote a letter on 10th September, 1966, requesting

the Corporation to take delivery of the human hair. The State Trading Corporation replied on 16th August, 1966, agreeing to collect the stock of human hair in the course of the month. Before the passing of letters between the Devasthanam and the State Trading Corporation on 28th June, 1966, the Board of Trustees of the Devasthanam had decided to hold a public auction for the sale of the human hair and fixed the date of auction as 21st September, 1966. Wide publicity was given about the date of auction. The State Trading Corporation did not clear the stock of human hair before the end of August, 1966 and the Devasthanam decided to proceed with the auction.

3. Two days prior to the auction, i.e., on 19th September, 1966, the Deputy Commissioner sent a letter to the Executive Officer of the Devasthanam directing cancellation of the auction scheduled to be held on 21st September, 1966. This letter was served on the Board of Trustees on 20th September, 1966, a day before the auction. The Board of Trustees considered the letter of the Deputy Commissioner and decided to proceed with the auction, subject to the approval by the Deputy Commissioner. The auction in fact was held on 21st September, 1966. For the quantity of hair collected during a period of $\frac{2}{12}$ months the highest bid at the auction was Rs. 9,160. The Executive Officer after holding the auction, submitted a report to the Deputy Commissioner on 22nd September, 1966 requesting approval of the sale in favour of the highest bidder for Rs. 9,160. The Commissioner did not approve the sale to the highest bidder on the ground that instructions which were issued for strict compliance have been flagrantly violated. The Deputy Commissioner instituted proceedings against the petitioner for disobeying the lawful orders of the Deputy Commissioner dated 19th September, 1966. "The petitioner submitted that the Board of Trustees found it impossible to cancel the auction fixed for 21st September, 1966 as the order of the Deputy Commissioner was received only on 20th. September, 1966." The petitioner also pointed out that while the State Trading Corporation offered only a sum of Rs. 3,545 for the human hair to be collected for the entire year, the quantity of hair collected for a period of $\frac{2}{12}$ months fetched a sum of Rs. 9,160 by way of public auction and that the auction was clearly for the benefit of the temple. After holding an enquiry, the Deputy Commissioner held that the petitioner was guilty of disobeying the lawful orders of a competent authority and dismissed him from service.

4. In this Writ Petition, the order of dismissal of the petitioner is challenged mainly on two grounds. Firstly, it is contended that the order passed by the Deputy Commissioner is not a lawful order as contemplated under the Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act XXII of 1959) (hereinafter called the Act). Secondly, it is submitted that there was in fact no disobedience. In order to appreciate the first contention, the relevant sections of the Act may be referred to. Section 23 of the Act provides as follows:

Subject to the provisions of this Act, the administration of all religious endowments shall be subject to the general superintendence and control of the

Commissioner; and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist.

By this section, the power of general superintendent and control over the administration of religious endowments is vested with the Commissioner. This power also includes the power to pass any order which may be necessary to ensure that the endowments are properly administered and that their income is duly appropriated for the purpose for which the endowments were founded. The question, therefore, will be whether the order which is impugned is within the competence of the Deputy Commissioner and passed for ensuring the proper administration of the endowment or to ensure that its income is duly appropriated for the purpose for which it was founded. Section 27 of the Act runs thus:

The trustee of a religious institution shall be bound to obey all lawful orders issued under the provisions of this Act by the Government, the Commissioner, the Deputy Commissioner, the Area Committee or the Assistant Commissioner.

On a reading of the two sections together, it is clear that the trustee is bound to obey all lawful orders issued under the provisions of the Act which would include orders which are necessary to ensure that endowments are properly administered. It is not in dispute that the practice of the Devasthanam was to lease the human hair in public auction. But, after the advent of the State Trading Corporation,, a resolution was passed by the Trustees on 28th August, 1966 to the effect that the. present stock may be sold out in public auction and that future collections may be sold to the State Trading Corporation. According to this resolution, they notified the public auction for 21st September, 1966. The order of the Commissioner dated 19th September, 1966 for the disobedience of which the petitioner is dismissed runs as follows:

The attention of the Executive Officer is invited to the reference cited. He is informed that the Commissioner, Hindu Religious and Charitable Endowment, Madras, has been addressed in the above matter on 15th September, 1966 and that he may await further instructions from the Commissioner. In the circumstances, he is requested to stop the auction proposed to be conducted on 21st September, 1966.

On the facts, it is clear that the proceedings of the Deputy Commissioner which directed the Devasthanam to hand over human hair to the State Trading Corporation is not with a view to ensuring that the endowment is properly administered, for, it is admitted that human hair collected for $\frac{2}{12}$ months was able to fetch a sum. of Rs. 9,160 in public auction whereas the human hair to be collected for one year was directed to be delivered to the State Trading Corporation for a sum of Rs. 3,545.. It may be that certain policy decisions regarding export of human hair might have induced the Government or the

authorities to authorise the State Trading Corporation to collect the human hair from the Devasthanam at a price fixed by the State Trading Corporation. But this is certainly not for the purpose of ensuring that the endowment is properly administered. The direction to hand over the human hair to the State Trading Corporation is certainly not for the purpose of ensuring proper administration of the temple. It cannot, therefore, be said to be an order passed within the scope of Section 23 of the Act. It will not also be a lawful order under the Act, which the trustee is enjoined to obey u/s 27 of the Act. On this ground alone, the Writ Petition will have to be allowed.

5. It has to be noted that explanation of the trustees is that the auction had been widely publicised and that it would be inconvenient for the parties to stop the auction on the previous day. The trustees took the precaution of holding the public auction, subject to the approval by the Deputy Commissioner. The holding of the auction, in the circumstances, cannot be said to be an intentional violation of the order of the Deputy Commissioner, the presumption of an intention to violate the order on the ground that "it cannot be conceived that the trustees have more interest in the administration than the competent authority" is not warranted as seen from the facts of this case. It is unnecessary to pursue this question any further, as I am satisfied that the direction issued by the Deputy Commissioner would not fall u/s 23 of the Act and it is not a lawful order under the provisions of the Act. The petitioner cannot be questioned for the disobedience of an order which he is not bound to obey u/s 27 of the Act.

6. On behalf of the Department, it was submitted that the petitioner has an alternative remedy by way of appeal to the Commissioner u/s 53(2) of the Act and this writ petition should not be entertained, as the petitioner has not availed himself of the alternative remedy. Section 53 of the Act enumerates the appropriate authority who could suspend, remove or dismiss a trustee. The Kallalagar Devasthanam at Madurai is a religious institution included in the list published u/s 46 of the Act, and so the Commissioner is the proper authority to dismiss the petitioner. Section 53(2) of the Act provides that the appropriate authority may inflict the punishment of suspension, removal or dismissal of a trustee for the reasons stated in Sub-section (2). Section 53(5) confers a right of appeal to the aggrieved person against an order passed under Sub-section (2) of Section 53. If the order is passed by the Commissioner, the appeal is to the Government and if it is by the Deputy Commissioner, to the Commissioner and if it is by the Area Committee, to the Deputy Commissioner. The Submission on behalf of the Department is that as this order is passed by the Deputy Commissioner, the petitioner ought to have preferred an appeal to the Commissioner. It would be seen that the appropriate authority for punishing the trustee, the petitioner in this case, is the Commissioner. The Deputy Commissioner proceeded with the enquiry and passed the order of dismissal on the petitioner by virtue of the powers delegated to him u/s 13 of the Act. In *Roop Chand Vs. State of Punjab*, it has been held by the Supreme Court that where the State Government delegated its power to hear appeals to an officer, an order

passed by such officer is an order passed by the State Government itself and not an order passed by any officer under the Act. In the circumstance, it was held that the State Government was not entitled to call for an examination of the records of the case disposed of by the officer acting as a delegate. In the instant case, the order passed by the Deputy Commissioner has to be taken as the order passed by the Commissioner and the appeal is only to the Government. It is not alleged that the petitioner ought to have preferred an appeal to the Government. This preliminary objection therefore fails.

7. In the result the Writ Petition is allowed with costs. Rs. 250.