**(2023) 05 KL CK 0142**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No.1801 Of 2021

P. Sreedharan Nambisan — APPELLANT

Vs

State Of Kerala — RESPONDENT

**Date of Decision :** 22-05-2023

**Acts Referred:**

Madras Hindu Religious and Charitable Endowments Act, 1951 — Section 39, 39(2), 39(3), 39(5), 40(3), 41, 41(2), 71

**Citation :** (2023) 05 KL CK 0142

**Hon'ble Judges :** Anil K. Narendran, J;P.G. Ajithkumar, J

**Bench :** Division Bench

**Advocate :** Sreedevi Kylasanath, Achuth Kylas, Joselal George, R.Mahesh Menon, Deago John K, Amal Dev C.V., R.Lakshmi Narayan, Mahesh V.Ramakrishnan, S.Rajmohan

**Final Decision :** Dismissed

## Judgement

P.G. Ajithkumar, J.

1. The petitioner is the hereditary trustee of Thripuranthaka Devaswom in Malappuram District. The 4th respondent as per Ext.P7 order dated 28.12.2020 appointed four non-hereditary trustees; respondents No.6 and 7 are two among them. The petitioner is aggrieved of appointing non-hereditary trustees, especially respondents No. 6 and 7 and hence he submitted Ext.P8 objection to the 4th respondent. Alleging that respondent Nos.2 to 4 did not take any remedial measures, the petitioner filed this Writ Petition seeking the following reliefs.

“(1) To issue a writ of certiorari or any other writ or order calling forth the records pertaining to Ext.P7 order of appointment with respect to 6th and 7th respondent and set aside the same;

(2) To issue a writ of certiorari or any other writ or order setting aside Ext.P7 as it is in contradiction to Ext.P2 judgment of this Court.”

2. This Writ Petition was admitted on 22.01.2021. The learned Senior Government Pleader took notice for respondent No.1 and the learned Standing Counsel for the Malabar Devaswom Board took notice for respondents No. 2 and 3. Notice was directed to be served on respondent Nos.5 to 7.

3. The learned Standing Counsel for the Malabar Devaswom Board submitted a statement for the 2nd respondent. Respondents No. 6 and 7 filed a counter affidavit.

4. On 01.09.2022, when this matter came up for consideration, the learned counsel appearing for the petitioner raised a legal contention that the 4th respondent did not have any power or authority to issue Ext.P7, by which the non hereditary trustees were appointed. Taking into account the rival contentions the Area Committee, Kozhikode Division, Malabar Devaswom Board was suo motu impleaded as the additional 8th respondent. The learned Standing Counsel for Malabar Devaswom Board took notice for the said respondent. In terms of the direction issued by this Court, the learned Standing Counsel on 02.11.2022 made available for the perusal of this Court the file relating to decision No.7 dated 22.12.2020 of the additional 8th respondent-Area Committee. We have perused the file and the learned counsel for the petitioner was allowed to peruse it.

5. Heard the learned counsel appearing for the petitioner, the learned Senior Government Pleader, the learned Standing Counsel for Malabar Devaswom Board and the learned counsel appearing for respondents No. 6 and 7.

6. The contention raised by the learned counsel appearing for the petitioner concerning the power and authority of the 4th respondent to issue Ext.P7 order is that Section 41 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (HR&CE Act) confers right on the Area Committee to appoint trustees in religious institutions; whereas Ext.P7 order was issued by the 4th respondent-Assistant Commissioner. In Ext.P7, resolution No.7 dated 23.12.2020 of the Area Committee is referred to as item No.3. From the file pertains to resolution No.7 dated 23.12.2020 of the Area Committee, which we have perused, it is found that the Committee had resolved to appoint four persons, including respondent Nos.6 and 7 as non hereditary trustees in Tripuranthakam Devaswom. Reference No.3 in Ext. P7 is resolution No.7 dated 23.12.2020 by which the Area Committee decided to make such appointments. Hence, it is clear that Ext.P7 was issued by the 4th respondent in terms of the decision of the additional 8th respondent Area Committee to appoint non-hereditary trustees. Therefore, the contention of the petitioner that the appointment was made by the 4th respondent, for which he has no power and it is invalid is untenable.

7. The contention of the petitioner is that he being the hereditary trustee of the temple, appointment of a non-hereditary trustee can be had only in consultation with him, whereas appointment as per Ext.P7 was made without any such consultation. The learned counsel for the petitioner would submit that for such blatant violation of the provisions of Section 39 of the HR & CE Act, Ext.P7 is

 

illegal and liable to be quashed. The law laid down in Ext.P2 judgment and also Ext.P3 order are placed reliance on by the learned counsel for the petitioner in order to fortify his contentions.

8. Ext.P2 is a copy of the judgment in W.P.(C) No.1705 of 2018 which was filed by the petitioner. The grievance raised in the said Writ Petition was also that non-hereditary trustees in Sree Thripuranthaka Devaswom were appointed in a surreptitious manner and without him being consulted. This Court held that the process for identification and selection of candidates for being appointed as non-hereditary trustees can be done by the Area Committee and what is required by the provisions of Section 39 of the HR&CE Act is to get views of the hereditary trustees in the matter of appointment. When the Malabar Devaswom Board sought review of Ext.P2 judgement, this Court clarified the position of law as follows:

“3. xx xx We did not at any point of time say that the concurrence of the Hereditary Trustee is necessary but only that he may be given the opportunity to state why he thinks that there is no necessity for the Commissioner to appoint a Non-hereditary Trustee. We found this apposite since we see from the provisions of Section 39(5) of the Act that the Commissioner shall not fill up a vacancy of a Non-hereditary Trustee unless he considers it necessary to do so.

4. It was in the backdrop of this particular provision that we said that even though the issuance of a notice to the Hereditary Trustee is not mandated or specifically provided under Section 39(5), it will be desirable, to ensure fairness in procedure, that the Hereditary Trustee is also afforded an opportunity to place his views appropriately before final orders are passed under Section 39(5). As we have already indicated above, our intention was not that the concurrence of the Hereditary Trustee to the proposal of the Commissioner be obtained but merely that he be given an opportunity to speak his opinion as to why he feels that there is no necessity to appoint a Non-hereditary Trustee in the Temple.”

9. A non-hereditary trustee in a religious institution, over which an Area Committee has jurisdiction, is appointed in terms of the provisions under Section 41 of the HR&CE Act. Section 41 reads:

“41. Power of Areas Committee to appoint trustees.- (1) In the case of any religious institution over which an Area Committee has jurisdiction, the Area Committee shall have the same power to appoint trustees as is vested in the Commissioner in the case of a religious institution referred to in Section 39:

Provided that the Area Committee may, in the case of any institution which has no hereditary trustee, appoint a single trustee.

(2) The provisions of section 39, subsection (3), and section 40, shall apply to the trustee or trustees appointed, or the Board of Trustees constituted, by the Area Committee as they apply in relation to the trustee or trustees appointed, or the Board of Trustees constituted, by the Commissioner.”

 

10. It is therefore clear that the Area Committee shall have to make appointments of trustees in the religious institutions under its jurisdiction in the manner provided in Section 39 of the HR&CE Act. Obviously, when the Area Committee exercises powers under Section 39 of the HR&CE Act as permitted under Section 41 in the matter of appointment of non-hereditary trustees, the obligations associated with that power should also be honoured. One of such obligations is to give notice to the hereditary trustee about such an appointment. As explained in Exts.P2 and P3, what is required is to get views of the hereditary trustee and not concurrence of the trustees. In the statement filed on behalf of the 2nd respondent, it is explained that intimation regarding the proposal to appoint non-hereditary trustees was given to the petitioner and after considering his objection only further actions were taken. In such circumstances, the petitioner cannot be heard to contend that there occurred non-compliance of the provisions of Section 39 of the HR&CE Act in issuing Ext.P7 order.

11. Ext.P1 is the scheme in terms of which Sree Thripuranthaka Devaswom is administering. It is recited in Clause (2) of the Scheme that the non-hereditary trustees appointed for a term of five years will not be eligible for appointment for the immediate succeeding period, but they will be eligible to be appointed after the lapse of five years. The learned counsel appearing for the petitioner would submit that respondent Nos.6 and 7 were members of the trustee board constituted in the year 2018 and therefore, they were not eligible for a re-appointment.

12. The learned Standing Counsel and also the learned counsel appearing for respondents 6 ad 7 would submit that a non-hereditary trustee served for a period of five years alone is ineligible for re-appointment, whereas they served only for two years and therefore their re-appointment as per Ext.P7 is valid.

13. Section 39(3) of the HR&CE Act delineates the term of office of a non-hereditary trustee. Originally it was five years. Section 41(2) of the HR&CE Act specifically makes Section 39(3) applicable to the appointments made by an Area Committee as well. Section 39(3) was amended in the year 2017 and the term of office of a non-hereditary trustee is re-fixed as two years. True, Ext.P1 scheme was framed during the period when the term of office of a hereditary trustee was fixed as five years. However, when the stipulation of clause (2) of Ext.P1 is plain and clear, that ineligibility for re-appointment is attracted only if a non-hereditary trustee has served for a period of five years. The amendment in Section 39(3) of the HR&CE Act cannot be read in or incorporated so as to have the effect of modifying the said stipulation in Ext.P1. Therefore, the ineligibility for re-appointment will be attracted only if a non-hereditary trustee functions as such for a continuous period of five years. In that view of the matter, appointment of respondent Nos.6 and 7 as per Ext.P7 cannot be invalidated for the reason that they functioned as non-hereditary trustees for preceding two years period. The contention of the petitioner in that regard is also untenable.

14. The petitioner alleges that accounts of the Devaswom during the period from

 

2018 to 2020 were not audited. During the said period, there occurred many financial irregularities and when no audit of the said accounts was done, re-appointing respondents No. 6 and 7 is quite inappropriate and illegal. For that reason also, appointment of respondents No. 6 and 7 as per Ext.P7 is sought to be annulled. In answer to the said contention, the 2nd respondent explained that the accounts in 2019 were already audited.

15. W.P.(C) No.19299 of 2020 was filed by the petitioner seeking reliefs including orders directing completion of audit of accounts in Sree Thripuranthaka Devaswom. The 2nd respondent would state that in that Writ Petition itself, it was submitted that accounts till December 2019 were already audited. Therefore, the accounts for the year 2020 alone remained to be audited. That fact is not controverted. Therefore, the contention that since the audit of the accounts during the period from 2018 to 2020 was not audited and hence appointment of respondents No. 6 and 7 is invalid cannot be countenanced.

16. At the same time, it is noticed that accounts of Sree Thripuranthaka Devaswom were not being audited as contemplated in Section 71 and other relevant provisions in the HR&CE Act. Periodical audit of the accounts of the Devaswom is an absolute necessity. When private individuals are appointed as non-hereditary trustees, and they are in charge of the administration of the Devaswom, it is absolutely necessary that the accounts during the period of each such Board are audited within the stipulated time itself. Any loss occasioned to the Devaswom during the period of an outgoing trustee board shall be ascertained without any delay and recovered with promptitude. Any delay or laches in that regard cannot be tolerated. The Commissioner and the subordinates of the Malabar Devaswom Board are duty bound to see that such audits are unfailingly done in time. Any lapse in that matter on the part of any of the officers of the Board shall be dealt with strictly.

17. In view of what are stated above, we are of the view that challenge to Ext.P7 order in this Writ Petition is unsustainable in law. The Writ Petition fails and accordingly the same is dismissed.