(2011) 05 KL CK 0070

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37182 of 2010

Parameswaran Namboothiri APPELLANT

Vs

Malabar Devaswom Board RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Citation : (2011) 2 ILR (Ker) 865 : (2011) 2 KLT 988

Hon'ble Judges : Thottathil B. Radhakrishnan, J;S.S. Satheesachandran, J

Bench : Division Bench

Advocate : S.A. Saju and K.C. Kiran, for the Appellant; K. Mohanakannan, Binoy Vasudevan and P.G. Babitha, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—The 1st Petitioner is the hereditary trustee of the Sree Nenminipurath Ayyappa Temple, Alanellur in Palakkad District, for which, and the 2nd Petitioner is appointed as fit person.

2. Purportedly acting on a complaint dated 10.05.2010, by one Vasudevan Unni Moosath and 50 others and a report dated 14.06.2010 of the Inspector, Perinthalmanna, Ext.P1 notice was issued to the 1st Petitioner stating that it is found desirable to have a trustee board appointed for the temple. The 1st Petitioner replied as per Ext.P2 stating that the copies of the materials relied on in Ext.P1 have not been served on him and that he is not aware of the contents of the report of the Inspector. We may also note that even Ext.P1 does not explicitly state any specific reason for the proposed action, but only says that it is to ensure transparency and effectiveness in the administration. Even on such basis, he made certain statements in Ext.P2 denying the allegations leveled against him. He also offered to produce whatever materials that may be called for and also to explain the situation.

3. Ext.P3 is thereafter issued by the Assistant Commissioner, inviting applications for appointment of non-hereditary trustees, stated to be acting on a direction issued by the Area Committee, overruling the objections in Ext.P2. This is under

challenge.

4. Though it is stated in the counter affidavit that the Area Committee passed a resolution, the same is not before us. We are not sure that the resolution discloses any reason for it. Yet we do not think it necessary for us to wait for the production of that document because in our view, the case is to be decided only with reference to facts and factors that are relevant with reference to Section 39(2) of the Hindu Religious and Charitable Endowments Act, 1951, for short, the ''Act'', which provides the procedure and applies to the temple in question in view of Section 41 read with Section 39 of that Act.

5. Section 39(2) of the Act makes it obligatory on the authority to consider whether circumstances exist for the appointment of non-hereditary trustees. For this, notice has to be issued to the hereditary trustees, prior to the decision. They have to be notified to answer as to whether the trust is being properly managed. Section 39(2) of the Act provides for such enquiry as the authority deems adequate. On the basis of such enquiry, the authority has to come to a conclusion that it considers it necessary to have non-hereditary trustee appointed. Only then would the question of such appointment arise. For this, the authority has to arrive at its reasons and also record the reasons. This decision making process u/s 39(2) of the Act is a cardinal safety-valve for the hereditary trustees and the trust, which is a Hindu religious institution, to show that statutory intervention by appointment of non-hereditary trustees is not necessary in a given case. This obviously means that the adequacy of the enquiry is not left to the whims of the authority, but depends upon the facts of each case; the quality of allegations; the nature of response that is given by the hereditary trustees to the allegations etc.

6. In the case in hand, Ext.P2 reply is an eloquent expression of the hereditary trustee''s inability to answer the allegations in the absence of being served with copies of the Inspector''s report and the so-called complaint by 51 persons. With this, the hereditary trustee had also offered to provide materials and clarifications. Therefore, it was an abundantly fit case where, an opportunity of personal hearing after notifying the contents of the Inspector''s report and complaint and opportunity for providing further materials ought to have been given to the hereditary trustee. Without that, the action taken on the strength of Section 39(2) read with Section 41 of the Act is arbitrary and it fails.

7. The formulation of the decision to appoint a hereditary trustee is sine qua non to invite applications for appointment of non-hereditary trustees. A decision to appoint non-hereditary trustees can be taken only after formulating an opinion and recording reasons in terms of Section 39(2) of the Act. That obviously, as already noted, can be only after an adequate enquiry. Having found that no due enquiry was held in terms of law, the issuance of Ext.P3 and any proceedings on the basis of that are devoid of authority and hence void.

For the aforesaid reasons, Ext.P3 and all proceedings that led to it are quashed.

Writ Petition is ordered accordingly, however, reserving the right, if any, of the official Respondents to initiate action, if any, afresh, in accordance with law if the fact situation warrants so. We also clarify that even if the official Respondents proceed to act on the complaint and report referred to in Ext.P1, fresh notice has to be issued on such basis in the light of what is stated above and proceed with action in accordance with law.