

**(1916) 10 MAD CK 0012**  
**In the Madras High Court**

R. Sundararama Sastri

APPELLANT

Vs

M. Anantha Krishna Niadu

RESPONDENT

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**Date of Decision :** 27-10-1916

**Acts Referred:**

**Citation :** 38 Ind. Cas. 695 : (1917) 5 LW 672

**Hon'ble Judges :** Sadasiva Aiyar, J; Napier, J

**Bench :** Division Bench

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**Judgement**

Sadasiva Aiyar, J.—I have, in "my judgment reported as Ramanathan Chettiar v. Saminatha Aiyar 14 Ind. Cas. 520 pointed out, how some

temple committees wish to reduce the temple trustees under their superintendence to the position of subordinate clerks doing work under the head

clerk of the committee office, and this, case furnishes a striking example of such attempts. There is very good ground for the complaint made by the

defendant at the end of the letter (Exhibit GG) which he wrote to the committee that his time was being uselessly taken up with answering the

letters of the committee based on frivolous petitions sent against him to the committee, the most prominent member of which took up an attitude of

violent antagonism against the defendant very soon after the date of the defendant's appointment. That attitude began when the defendant, instead

of renewing the festival purohitship of that committee member's (P.W. Nos. 8 & 1/2s) protegee, put tip the privilege of acting as festival purohit to the

highest bidder (see Exhibit XX, dated 13th July 1910, and the letters 04 and YY written by P. W. No. 8 to the defendant on the 13th and 16th

August 1910). Some of the servants in the Devasthanam office constituted themselves the spies of the committee, and the member above referred to

began to call for numerous explanations, to pay sudden surprise visits to the trustee's office, to write long minutes dealing with such matters as the

health of the defendant, his not attending the temple office regularly, his not tending as much and as frequently as he ought to do and so on. A

frivolous charge of theft of grain which was made by a dismissed temple servant against the trustee was thrown out by the Magistrate and yet it

was made the occasion, availed of as fully as possible, to annoy and insult the trustee.

2. Though three out of the five committee members took part in the proceeding resulting in the dismissal of the defendant, one of the three (who

wrote the long leading minute and who has been already mentioned) was clearly actuated by ill-will towards the defendant and another was his

client, who never differed from him. P. W. No. 8, in fact, admits: "I wrote the proceedings I was practically the chief in that matter." Nothing could

be or was urged against the third gentleman (who was a respected and religious citizen of Madura), except that he was very advanced in years and

seems to have been very infirm in health (see, as to his infirmities including a swelling in the legs and as to the consequent holding of a meeting of the

temple committee in his house, Mr. Sundararaja Aiyangar's evidence. The said committee member has since,, died full of years and honours during

the progress of the litigation). As I said, nothing could be or was urged against this member's good faith. But as pointed out by my learned brother

in his judgment, even if all the three members acted in good faith, that is not sufficient to justify the defendant's dismissal. Good cause must be

shown for the removal of the defendant, and I am quite clear that no good cause has been shown in this case. It is significant that the plaintiff (a

criminal Vakil) who was a. servant of the Devasthanam under a former trustee and worked also under the plaintiff on a monthly salary of Rs. 30, for

a few months, whose offer to continue in the temple service at least in an honorary capacity was declined by the defendant in the end of August

1910 and who set up and conducted the criminal litigation against the .defendant, seems to have known, even before the actual date of the

defendant's dismissal (24th April 1911), that the defendant would be dismissed by the committee, for he addresses to the committee two petitions

on the 23rd April 1911 as follows:

I hear that the office of manager is going to fall vacant. I request, I may be appointed for the post. I shall give security therefor for Rs. 5,000 in the shape of suitable Immovable property. I shall abide by the rules framed in the members' office on the 2½th June 1910. If I am dismissed from the office of manager by a majority of members, I shall hand over charge without making any objection.

Exhibit (sic) "As soon as I become manager, I shall file a suit against Ananthakrishna Naicker" (defendant) "for the amounts due to the

Devastanam, In respect of the affairs concerning the Nambis and Paramasami Pattar, I shall in consultation with you make the necessary

arrangements. In respect of the cases to be conducted concerning the Devastanam; affairs, I shall act in consultation with you and shall engage

Vakils after consulting you. In respect of the Devastanam villages and the Nirvahan villages, I shall act as you say, For doing the work

connected with the above, I shall get the work done by persons whom, you may appoint.

3. The man was so anxious to get in that he is willing to become a mere tool of the committee. And what is the character of this man? Let P.W.

No. 8, who appointed him in defendant's place, answer: "I would not choose either the plaintiff or the defendant for the office of manager having

regard to what they are found to be at present." [The plaintiff, (according to the witness) unscrupulously broke his undertaking with the committee

members to spend his own moneys in the litigations with the defendant], "By appointing plaintiff to the managership, I feel that the fire has gone into

the fire from the frying pan.... To drive out a bad man, a person like the plaintiff was necessary." While I do not agree with all the observations

made by the lower Court in support of its conclusions, I substantially agree with its finding that the defendant has not been proved guilty of any

such acts of gross insubordination, misfeasance or neglect of duty as could justify his removal from office.

4. I, therefore, agree with my learned brother that this appeal should be dismissed with costs payable and to be borne by the appellant out of his

own private funds, there being no justification whatever for saddling the temple funds with such costs, a course contended for strenuously by the

learned Vakil who argued for the appellant in reply.

Napier, J.

5. This is an appeal by the plaintiff from a decree of the Subordinate recovery of possession, of a Devastanam of which he alleges that he has been

appointed trustee, from the defendant who, he claims, has been properly removed from the trust by the temple committee. The defendant was

appointed on the 28th June 1910 and was dismissed on the 24th April 1911. The Subordinate Judge has based his decision on three grounds, (1)

that the order of dismissal was irregular, (2) that certain charges laid against the defendant on which the dismissal is founded are not established,

and (3) that the plaintiff has not been validly appointed. With regard to the first ground I do not propose to follow the Subordinate Judge in his

minute examination of the history of the proceedings that led up to the dismissal, and I will content myself by saying that, in my opinion, his criticism

is too meticulous. In my view two things require to be established. One is that all the members of the committee had due notice of a meeting at

which the charges were to be considered, and the other that the trustee had like notice; whether a meeting failed by absence of a quorum, or

whether the minutes have been written up on the day the meeting was held or have been signed by all the members are, to my mind, questions of

little importance, I am of opinion that the proceedings were perfectly regular and that in consequence the Subordinate Judge's judgment cannot be

upheld on this ground. With regard to the appointment of the plaintiff it is unnecessary to decide whether the appointment was regular, but I would

only say that the judgment of the lower Court on this point seems to me to be vitiated by a number of assumptions for which there is no warrant.

6. The real question in the suit is whether the dismissal can be upheld on the merits. The learned Advocate-General endeavoured to establish the

proposition that, as the defendant trustee had notice of the charges that were made against him and of the date of enquiry and did not attend, the

decision of the committee made bona fide after due examination and consideration must be final on the facts and the Courts have no power to

examine, its correctness. For that proposition he was only able, to adduce one authority, namely, the decision reported as *Narasimha Chariar v.*

*Muthukumarasamy Mudaliar* 11 M.L.J. 236, At first sight, that decision does seem to support his contention, but I think on closer examination that

it becomes clear that the High Court upheld the decision-of the lower Court that it was open to the defendants in the circumstances to hold a

trustee guilty of insubordination, neglect of duty and possible misappropriation. The insubordination and neglect of duty, is stated in a very short

judgment as follows: ""If he had acted, as he at first promised, and shown the jewels, the mattes would have gone no further, but instead of doing

so, he first treats the committee with contempt by not appearing in accordance with his promise, He next attempts to escape from his undertaking

by pretending he is too ill to come and half an hour afterwards comes and then, instead of producing the jewels or pointing out where they are,

declines to do so for reasons which are, at the best, childish. This amply justified the course taken by the committee in dismissing him."" I cannot

read this decision as meaning that it was open to the committee to dismiss a man for possible misappropriation, in view of the earlier decision of

one of the learned Judges, Mr. Justice Shephard, as to the requirements of a dismissal. That decision is reported as Seshadri Ayyangar v Nataraja

Ayyar 21 M.S 179, and it was there held by the three Judges that a trustee cannot be dismissed from office except for good and sufficient cause

shown. The learned Advocate-General has contended that good and sufficient cause mean<sup>3</sup> a cause which the temple committee bona fide,

thought to be good and sufficient. This contention is, however, negatived by the language used by the learned Judges. At page 183 Mr. Justice

Shephard says; ""if the result of the examination is to show that the trustee ought not to have been removed from his office the act of the committee

in removing him...goes for nothing."" Mr. Justice Davies treats the question of good and sufficient cause as a question of fact. This Court held that it

was for the temple committee to make out that the dismissal was in fact for good and sufficient cause [see Dorasami Ayyar v. Annasami Ayyar 23

M.S 306. On principle too, it is impossible to come to any other conclusion. A cestui que trust has a right to ask the Court to remove a trustee for

misconduct but the allegations must be proved according to law. It has not been argued that there is anything in Act XX of 1863 which specifically

makes the committee the sole Judge of what is good and sufficient cause and once it is admitted that the trustee has a free-hold in his office, his

right to hold it, until legally proved unfit, must follow. u/s 14 the Court has power to remove a temple trustee for proved misfeasance, breach of

trust or neglect of duty just as in the case of any other trustee and it would be strange if the powers of the temple committee were wider than those

of the Court. I am, therefore, clear that it rests on the party who wishes to show that a trustee has been validly dismissed, to prove that, in fact,

there was good and sufficient cause.

7. The grounds relied on by the learned Advocate-General fall into two classes: one the breach of certain rules made " by the temple committee

and the other definite acts of misconduct. With regard to the rules, we have examined them carefully and have come to the conclusion that the

friction that exists between the temple committee and the trustee is largely due to these rules. I do not wish to be understood to say that it is not in

the power of the temple committee to frame rules. I think\* that they have that power and that it is a power which should be exercised, but its

exercise must be within the proper sphere of the duties of the temple committee and must not infringe on the rights of the trustee, which exist by

virtue of his trust) and also by virtue of his power of management. Any attempt by rules to reduce a trustee to the position of a servant of the

temple committee is, in my opinion, ultra vires; and many of these rules do violate this principle. It has been laid down that the trustee has a free-

hold in his office. The property is vested in him. The management of the estates and the control - of the Devasthanam are his duties. [Vide the

language used in Ramanathan Chettiar v. Saminatha Aiyar 23 M.L.J. 278 where the learned Judges say: ""Neither an individual member of the

temple committee nor the committee as a body should take upon himself or itself the duties and the powers of the manager of a temple and that the

manager is the person in whom the temple property is vested and he alone is entitled to the receipt of its income and represents the temple god fully

in litigation and to the outside public.""] The committee have powers of superintendence. They are entitled to and should make rules for the

guidance of the trustee, which will enable them to exercise that power. It was laid down in Subba Naidu v. Gopalaswamy Naidu 15 M.L.J. 185; It

is prima facie the, duty of a trustee to keep or at least supervise the keeping of the accounts daily, so as to be directly responsible for them and to

be in a position to submit them punctually to the committee."" That is the view with which I entirely concur. In Ramanathan Chettiar v. Saminathan

Aiyar 14 Ind. Cas. 520 it was laid down that they should confine the exercise of their powers to laying down general instructions for the trustees, calling for periodical accounts and for information and explanation where important questions of management are involved and giving advice from time to time. The learned Judges in that case specifically condemned the conduct of the committee in issuing detailed orders to the manager in regard to the internal management of the institution and in other ways usurping the powers of the trustee. Applying these principles to the rules issued by this committee which are filed as Exhibit B, I am satisfied that that part of Rule (1) which requires the previous sanction of the committee for any expenditure over Rs. 100 except for puja and salary is ultra vires, that that part of Rule (2) which prohibits the manager from granting a lease of the swami's patta lands or uncultivated lands for any fixed period is also ultra vires, that the rule requiring the sanction of the committee before the manager allows any one to erect temporary alighting places for the swami is also ultra vires and, for reasons which I will give later, that the rule requiring the manager to invest the moneys of the Devasthanam according to the orders of the committee is also ultra vires. I am further of opinion that the rule requiring the manager to send his diary to the committee once in fifteen days and requiring him to put his salary on the payment bill of the committee's office is not only ultra vires but extremely humiliating to a trustee, for it relegates him to the position of a servant of the committee; while the rule requiring him to keep all sums of money in excess of Rs. 1,000 in a separate box and not to open that box without informing the committee is, besides being futile, a further attempt to reduce him to the position of a servant. Some of the rules are undoubtedly proper--the direction for the submission of accounts which is in pursuance of their powers u/s 13, the direction that he should go on tour, the direction that he should prepare a budget, the direction that he should appoint qualified persons as Tahsildars and superintendents and make necessary repairs. I think it is to be regretted that the committee did not submit their rules to a qualified lawyer, who would be able to differentiate between such rules as are proper in the exercise of their duties of superintendence and supervision and such as are undue interference with the vested rights of the trustee.

8. Out of the 24 charges framed against the trustee and sent to him in the yadast Exhibit E of the 20th February 1911, six are founded on the rules

and out-of these none are based on any rule which, in my opinion, is clearly within the powers of .the committee. The only one about which I have

had any doubt is the charge of not investing a sum of Rs. 5,000 in the Indian Bank as directed by the committee and as required by Rule (5). It has

been urged by the learned Advocate-General that this is a proper direction and I was at first inclined to take that view; but I have come to the

conclusion that such a rule must lead to an impossible position. It is held in Sethu v. Subramanya 11 M.S 274 that a trustee is a trustee of the

temple property including money for the specific purpose of applying the property to the use of the temple, and in Ponduranga v. Nagappa 12 M.S

366 that the temple committee are not entitled to possession of the temple or its properties, as it is the lawful trustee or manager of the temple for

the time being that is entitled to possession of these properties and to the receipt of its income. The trustee is, therefore, responsible to the

beneficiary temple for its money and can be made liable for any loss arising out of the neglect of his trust. It would manifestly be an impossible

position if the trustee-was to be held bound to follow the directions of the temple committee for the investment of the trust funds and yet to have to

account for any loss that arose. This is the contention put forward by the defendant in his reply to the charges, Exhibit GG. In paragraph 19 of that

document he said as follows: ""There is no objection in investing money at once (as directed) if the members write now that they will be

responsible."" In my opinion, he was entitled to make that condition before obeying the direction of the committee.

9. Coming now to the charges other than those of breach of the rules, the learned Advocate-General has strongly pressed the failure of the trustee

to give the security demanded. We have examined the history of this failure minutely and we are satisfied that the case breaks down for the reason

that, whether the security tendered was sufficient or not, the committee did -not, in fact, pass any resolution to the effect that the security was

insufficient and communicate that resolution to him. The serious charge of breach of trust with respect to certain grain alleged to have been taken

by the trustee from the temple granary for his own use, was only pressed by the learned Advocate-General in connection with the failure of the



trustee to attend the meeting at which this charge was considered and the contention that the bona fide belief of the committee in the truth of this charge coupled with that failure was good and sufficient cause." Admittedly a charge had been laid in a Criminal Court against the trustee in respect of this matter and the hearing of the case was proceeding at the time he was called upon to appear. Admittedly he was discharged and compensation was given to him, and further he took proceedings against the complainant though he abandoned them on receiving an apology. The learned Advocate-General has, therefore, very properly not pressed the truth of the charge. Therefore; in the view I take of the law, this charge fails. But I have felt some doubt whether the dismissal could not be upheld on the refusal of the trustee to attend the meeting. I cannot accept Mr. Rangaohari's contention that attendance at a meeting is a right of the trustee only and is not a duty. This view seems to me to be entirely inconsistent with; the proper view of the duties of a temple committee and also the view that a trustee can only be dismissed for actual good cause shown. I have no doubt that it is the duty of a temple committee to investigate charges made against a trustee and it is obvious that if the trustee sets their authority at defiance and declines to attend a meeting where he could offer explanations and criticise the allegations made against him, it makes it extremely difficult for the temple committee to exercise their functions properly. That seems to me to be the view taken by this Court in *Narasimha Chariar v. Muthukumarasamy Mudalir* 11 M.L.J. 236 and I entirely endorse it. The reply sent by the trustee to the committee's yadast directing him to appear is Exhibit JJ. I can only characterise this as disingenuous and evasive, although I think allowance should be made for the natural feeling of irritation due to the arbitrary manner in which he had been treated<sup>1</sup> on more than one occasion, especially by one of the committee by name D. Sundararaja Iyengar of whose conduct, throughout the whole of this trouble. I desire to express my strong condemnation. I have no doubt, therefore, that this refusal did constitute a breach of duty, but I accept two contentions of Mr. Rangachari which relieve me from upholding the dismissal on this ground. The first is that the committee did not, in fact, base their dismissal on this ground. The second is that before a trustee is dismissed on this ground, he should have the gravity of his conduct pointed out to him and be given an opportunity to pat himself, right

with the committee in this respect. This was not done and I give him the benefit of the supposition that if the committee had written to him and told

him that, they insisted on his presence and pointed out the result of his refusal, he might have reconsidered his position and attended the meeting; I

am the more inclined to take this view-in this case, because undoubtedly he has been treated throughout in a manner which he had no right to

expect and his defiance of the committee's authority is very largely due to their own action.

10. I am, therefore, of opinion that the appeal fails. With regard to costs, we are asked to direct costs to be paid out of the temple properties. I

should be very-slow to do this with regard to the costs of the appeal, for I think that the appeal should not have been brought. I quite agree in the

view expressed in other cases that where the committee have acted bona fide and in due exercise of their powers, the fact that the Courts come to

a different conclusion should not penalise either them or a new trustee appointed by them in costs. To hold otherwise would be to make it

impossible for an honest committee to exercise their functions fearlessly. But in this case there is good reason for making the plaintiff pay the costs.

He has undoubtedly been doing everything in his power to oust the defendant and get the post for himself, and the evidence discloses that his

character and antecedents are not such as would make him a fit person to be appointed or entitle him to any consideration in the matter of costs.

He will, therefore, be directed to pay the costs throughout.