
(1997) 07 MAD CK 0092
In the Madras High Court

S. Sankaralingam Poosari and Others	APPELLANT
Vs	
The Joint Commissioner, H.R. and C.E. Administration Department and Others	RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 26,
26(4), 46, 53, 53(1)(a)

Citation : (1997) 2 MLJ 529

Hon'ble Judges : Jayasimha Babu, J

Bench : Single Bench

Judgement

Jayasimha Babu, J.—These three writ petitions show the sorry state of affairs in the management of a religious institutions. The trustees of the institution, though expected to conduct themselves in a manner which would command respect from the lay public and the worshippers of the deity, have been quarrelling among themselves in a manner which can only bring disrepute to themselves and to the institution.

2. Sankaralingam Poosari, petitioner in W.P. Nos. 678, 732 and one of five petitioners in W.P. No. 1700 of 1997 who is one of the nine hereditary trustees of Arulmighu Mariamman Temple at Irakkunagudi Sattur Taluk, Kamarajar District who constituted and Board of Trustees of the Temple, is now past 80 years of age, although he is apparently unwilling to admit that fact, and has chosen to state in the affidavit and other documents that he is "over 70" years of age. He, on his own, gave a petition to the Assistant Commissioner on 8.11.1996 stating that his ill-health and physical infirmity which included nervous disability rendered it necessary for him to have assistance for casting his vote at the election to the office of the Chairman of the Board of Trustees Scheduled to be held on 13.1.1997. This prompted his eldest son, who, in accordance with Section 54 of the H.R. & C.E. Act would be entitled to succeed as a trustee to seek the removal of his father from the office of the trustee. There is some dispute as to whether the father sought an enquiry thereafter. Files produced by

the Government contain a type written letter which shows the signature of the letter as "S. Sankaralingam Poosari" - the name being written in Tamil. Counsel for the petitioner repudiates that signature is that of his client. The files also contain the proceedings of what is alleged to be minutes of the rival meeting of petitioners and four other trustees opposed the re-election of Sangiah Poosari as Chairman, and which bears the thumb impression of the petitioner, next to which his name is written in Tamil. The writing there is identical to the writing found on the petition alleged by respondents to have been given by the petitioner seeking an enquiry after his eldest son has filed an application, seeking his father's place, on the Board of Trustees.

3. The manner in which the officers acted thereafter raises doubts regarding their impartiality. A Subordinate Officer functioning at a place which is said to be 150 Kms. away from the office of the superior officer is stated to have issued a consequential order on the same day, 27th December, 1996 on which day the Superior officer had issued the order to his subordinate. The date is said to be a mistake. However no other date has been shown to be the correct date.

4. According to the respondents, an enquiry was held by the Assistant Commissioner by visiting the residence of the petitioner. Not finding the petitioner in his house, formal notice for an enquiry is stated to have been served on the younger son. In the affidavit filed by the younger son, it is averred that no such notice was served. The respondents have taken the further stand that they sent a notice by courier, That fact is also disputed. According to the petitioner a letter was found thrown into the house only on the 4th of January, 1997 long after the date fixed for the enquiry was over.

5. It is evident that neither the Joint Commissioner nor the Assistant Commissioner had seen the petitioner face to face at any point of time and they had not held any enquiry in his presence on any date prior to 6th January, 1997 when an order was made by the Joint Commissioner purporting to act u/s 26(4) of the H.R. & C.E. Act, removing the petitioner from the office of hereditary trustee.

6. On the 8th January, 1997 the petitioner filed a civil suit O.S. No. 4 of 1997 on the file of District Munsif, Sattur seeking an order of injunction to restrain the officers of the H.R. & C.E. Department as-also the said Sangiah Poosari from preventing the petitioner casting his vote at the meeting of the Board of Trustees which was to be held on the 13th January and for which a notice had been issued by Sangiah Poosari as Chairman. An interim order of injunction was granted. It has been averred that injunction order was also served on the respondents. The fact of such services has not been specifically denied by the respondents in their affidavits.

7. On the 13th January, 1997 the meeting of the Board of Trustees was held at the temple. The petitioner claims that he did try to go to the place where the meeting was held but was prevented from entering the place by the fourth

respondent. It is not disputed that at that meeting the Assistant Commissioner, the Executive Officer as also the Inspector of Police were present. Immediately after the meeting the Executive Officer as also the Assistant Commissioner submitted reports to their respective superiors wherein it is mentioned that four of the trustees, who attended the meeting, had informed the Chairman, that an order of injunction had been passed by the Civil Court and therefore, the meeting should not be proceeded with, without the participation of the petitioner. It has been also averred by the petitioner. It has been also averred by the petitioner that the fourth respondent is alleged to have made a statement that he would prefer to abide by the order of the Joint Commissioner removing the petitioner in preference to the order of the Civil Court, which has granted the injunction.

8. According to the 4th respondent, four of the trustees who attended the meeting, left the place after signing the register as their request that, that meeting should not be proceeded with without the participation of the petitioner, had been declined. Those four trustees along with the petitioner have in their W.P. No. 1700 of 1997 claimed that they also held a meeting on the same day and elected one among them as Chairman and that it is that meeting which should be approved by the concerned authorities of the department.

9. The validity of the re-election of Sangiah Poosari as Chairman of the meeting of the 13th January, 1997 depends upon the validity of the order by which the petitioner was removed or superseded by the impugned order made on 6th January, 1997. The fact that notices of the meeting had been served on the petitioner would be of no consequence in the light of the fact that even according to the fourth respondent, the petitioner would not have been permitted to vote despite an order of injunction issued by the Civil Court. The stand of the fourth respondent further is that the eldest son of the petitioner was the duly appointed trustee and entitled to vote. It is the vote cast by the eldest son at that meeting which tilted the scales in favour of Sangiah Poosari. Whether the petitioner was physically fit to attend the meeting is immaterial as the stand of the fourth respondent and the other four persons, who conducted the meeting makes it abundantly clear that they had no intention of recognising the petitioner as a trustee, notwithstanding the order of the court which required that he be not kept out of participation in the meeting.

10. Learned Senior counsel for the petitioner submitted that the provisions of the Act do not permit removal of a hereditary trustee on the ground of his becoming very old, as the age limit of 70 prescribed for non-hereditary trustees does not apply to a hereditary and therefore, the reason given for this removal being "old age" was wholly illegal. It was also submitted that the respondents that Section 53 of the Act which deals with removal or suspension of hereditary trustees has not been complied with, and the removal effected is in the purported exercise of power to supersede u/s 26(4) which is not the provision that can be invoked for removing a hereditary trustee. Further submission was that rules of natural justice had not been complied with in effecting the purported removal of the

petitioner from the office of the trustee.

11. These submissions for the petitioner deserves to be upheld. The act does not prescribe any age limit of the hereditary trustee. The legislative intention is that as long as the hereditary trustee is capable of discharging his functions notwithstanding his age, he should be allowed to continue, as his right to function as trustee is acquired by inheritance and not by appointment. The hereditary trustees, to this extent, differ from other trustees in the scheme of the Act.

12. Though the impugned order ends up by stating that the petitioner has been superseded. The reference set out in the order as also its tenor, clearly show that what was intended was removal of the petitioner from his office as trustee. The provision governing the removal of a hereditary trustee from his office is Section 53 of the Act, and it is that section which should have been invoked if the intention was to remove petitioner on any permissible ground under that Section. Section 53 of the Act, in Contract to Section 26 provides safeguards to the person likely to be affected by an adverse order. Section 53(3) of the Act provides:

When it is proposed to take action under Sub-section (2) the appropriate authority shall frame charge against the trustee concerned and give him an opportunity of meeting such charges of testing the evidence adduced against him and of adducing evidence in his favour; and the order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge with reasons therefore." A person entitled to the protection of Section 53 of the Act cannot be deprived of these safeguards by a side wind, by an authority inferior to the Government seeking to exercise the purported power of supersession by resorting to Section 26(4) of the Act which does not provide for any safeguards contained in Section 53. As provided in Section 53(1)(a) the authority competent to suspend, remove or dismiss trustees of institutions having an annual income of over rupees 10 lacs and included in the list published under Clause (iii) of Section 46, is the Government, The institution of which petitioner is a Trustee is included in such list. Any order passed by the Government suspending, removing or dismissing such a trustee is made appealable to this Court under Sub-section (5-A) of Section 53.

13. Rules of natural justice have been flouted and the manner in which the Department, as also the family of the petitioner, have gone about the matter does not inspire confidence. The impression that one is left with is, that the petition of the petitioner filed on 8th November, 1996 was taken advantage of by his eldest son, as also by the officers of the department, willingly, acting in aid of the fourth respondent Sangiah Poosari whose term of office as Chairman was to come to an end on the 13th January and who wanted to continue as Chairman. The petition filed by the petitioner on the 8th November was in the context of the fact that elections were to be held on the 13th January, and his concern was to ensure that he would be allowed to participate in the election. Fourth respondent

and the petitioner apparently recognised the fact that one would not support the other.

14. The officers of the Department instead of maintaining neutrality, acted in a manner which confirms the impression of their being interested in bringing about a change in the membership of the Board of Trustees by replacing the petitioner by his elder son who was supporting the fourth respondent well before 13th January, 1997 the date of meeting so that the re-election of the fourth respondent would be ensured. Though the Assistant Commissioner who was present at the meeting held on 13th January, claimed that he was merely the neutral functionary watching proceedings apparently became a party to the flouting of an order of interim injunction granted by a competent Civil Court. The conduct of these respondents in relation to the events which preceded that meeting, at the time of meeting, and what followed thereafter, do not do them much credit.

15. The petitioner is also not free from blame. The petitioner is past 80 years of age and is apparently not in a position to discharge his duties as a trustee. The petitioner appeared before this Court after these petitions were filed, as he was asked to be present in the light of the fact that the affidavit in support of the petition was not filed by him, but by his younger son, and even according to the petitioner he was not in a position to even sign his name and could only put his thumb impression. He appeared before the court on 3.4.1997. The court after seeing his physical condition and after the petitioner was asked by the court officer to state his name noted the following about his condition:

The petitioner is present in court pursuant to the order made on the last occasion. The petitioner is unable to answer simple questions. Though he is physically capable of moving, his speech is impaired. He needs help. He is unable to speak for himself. The impression gathered is that he is not in a position to effectively take part in any meeting and he is not in a position to comprehend the proceeding or to make any contribution to the same.

The petitioner did not appear before court thereafter. No medical certificate concerning his health or his ability to function effectively as a trustee has been produced.

16. That physical condition of the petitioner (Trustee) does not entitle the authorities to flout the requirements of law. If a trustee is to be removed from his office such removal has to be effected by following the procedure which the law prescribes. It cannot be short circuited as has sought to be done by the authorities. Though the elder son of the petitioner may feel perhaps justifiably that he should be allowed to take his father's place on the Board of Trustees, that by itself does not entitle him to force the father out of the Board of Trustees.

17. The impugned order removing the petitioner from his office as trustee cannot be sustained and is therefore set aside. At the meeting held on 13th January, 1997 the petitioner's eldest son who had no right to vote in view of his father's

removal being invalid, has been allowed to vote and it is his vote that titled the scales in favour of the fourth respondent. Despite the order of injunction having been served on respondents that order was not heeded. The re-election of the fourth respondent as Chairman of the Board of that meeting therefore also must necessarily be set aside as the meeting itself was not one which was held in accordance with law. The meeting purported to be held by four of the trustees opposed to the reelection of the fourth respondent along with the petitioner cannot be recognised as the meeting for which due notice had been given by a person competent to convene the meeting. The purported election of one of those five, as Chairman is of no effect.

18. This order will not come in the way of appropriate proceedings being initiated against the petitioner for his removal. Any such proceeding, it is needless to say must be in accordance with law.

19. It is not in the interest of institution to leave it without a Chairman particularly, when the fourth respondent has admittedly been functioning as the Chairman of the institution from the year 1988 continuously. His continuing in office for some more time cannot be regarded as prejudicial to the institution. He is, therefore, permitted to hold office as Chairman for six months from to day, within which period, the authorities may take such proceedings as they may consider necessary for the removal of the petitioner in the event of their considering him to have incurred any of the disqualifications set out in Section 53 of the Act. If no final order is passed on such proceedings initiated, or if no such proceeding is not initiated, a fresh meeting of the Board of Trustees shall be held at the end of the period of six months from to day for the purpose of electing a new Chairman.

20. During the course of the hearing more than one judgment of this Court involving one or other trustees was produced. The trustees have been busy litigating instead of devoting their energies for the benefit of the religious institution. Writ Petition Nos. 678 and 732 of 1997 are allowed. Writ Petition No. 1700 of 1997 is dismissed.