
(2001) 10 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 12108 of 2001

Sheeja

APPELLANT

Vs

Principal Secretary

RESPONDENT

Date of Decision : 08-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Guruvayoor Devaswom Act, 1978 — Section 3, 33, 62, 72

Citation : (2001) 10 KL CK 0011

Hon'ble Judges : V.P. Mohan Kumar, J;R. Rajendra Babu, J

Bench : Division Bench

Advocate : K. Radhakrishnan, Jayakrishnan Nambiar, P.C. Sasidharan, V.A. Mohammed, V.K. Ravindran, S. Radhakrishnan, Sanjeevkumar K. Gopal and Binoy Vasudevan, for the Appellant; C. Vatsalan, Government Pleader and V.K. Ramakrishnan, for the Respondent

Judgement

V.P. Mohan Kumar, J.—The petitioners herein are teachers working in either aided or unaided, English medium or vernacular schools managed by the Guruvayoor Devaswom. the common feature is that the management of the school vests with the Guruvayoor Devaswom.

2. u/s 3 of the Guruvayoor Devaswom Act, hereinafter referred to as the Act, the administration, control and management of the Devaswom vests in a committee constituted under the Act. Certain allegations were levelled against the said committee by a Council of devotees alleging that the members of the Board in office in 1998-99 had indulged in several corrupt practices including making illegal appointments in the schools under its management. The Government in exercise of the power u/s 33 of the Act conducted an investigation through the Vigilance Agency. They after due notice and enquiry, reported as under with respect to the appointments made to schools:

"In the above circumstances, it is very clear that interviewers, who were included in the interview board were asked to submit blank signed mark lists. The

Managing Committee, put the required marks according to their vested interests and selected the candidates. Almost all interviewers, who were present in the interview board as Subject Expert/Educationalist, had admitted this fact. This fact is substantiated with documentary evidence (mark lists). In toto the interview was not at all a fair one. The candidates were interviewed and selected without considering proper merits. The selection of two daughters of witness 40 K.V. Vishwanathan Nair is also dubious. The rank lists were published after 3 months from the date of interview. This also would have helped the Managing Committee to approach interested candidates, with some ulterior motives. The appointment of school teachers in the Sreekrishna High School and Guruvayur Devaswom English Medium School are not free and fair one."

There were other findings with respect to several other corrupt practices. As they are not relevant, they are not being referred to herein.

On receipt of the report, the Government issued the impugned order No. 71819/Dev.2/2000/RD dated 22.12.2000 addressed to the third respondent. Therein they stated as under:

"I am directed to forward herewith a copy of the letter cited and its enclosures and to request you to initiate action against the officers responsible for the irregularities and also to take departmental disciplinary action against Sri. Radhakrishnan, representative of the employees in the previous committee. Similarly, action may be taken for terminating the service of the teachers, who got appointment in the English Medium School, by the illegal action of the previous Managing Committee, based on the findings of the Vigilance Department and as recommended by them".

(Underlining supplied)

This clearly postulates an inquiry in identifying the teachers who secured appointment by illegal action. Consequent on the said notice, the third respondent issued notice to various teachers, wherein they stated as under:

"As per the vigilance enquiry report forwarded by the Principal Secretary regarding certain allegations against the previous managing committee members, the Government has directed the Guruvayoor Devaswom to initiate action against the officers responsible for the irregularities committed in connection with the appointment of teachers in both the Guruvayoor Devaswom English Medium School & Srikrishna School. It is also directed to take action for terminating the service of the teachers who got appointment in the Devaswom English Medium School and the Srikrishna Higher School; by the illegal action of the previous managing committee".

This also contemplates an inquiry into the merits of each case.

3. This order is impugned in these Writ Petitions contending inter alia that it is vitiated as made violating the principles of natural justice, that there is inherent want of jurisdiction for the first respondent to issue any such orders, that the

appellate authority has arrogated the powers of the original authority and that there is no illegality committed in the matter of appointments made.

4. We have heard M/s. Radhakrishnan, Jayakrishnan Nambiar, P.C. Sasidharan, V.A. Muhammed, V.K. Ravindran and S. Radhakrishnan. The counsel for the Devaswom Sri. U.K. Ramakrishnan was also heard.

5. Several other factual contentions are urged including the application of Kerala Education Rules etc., consequence of approval being granted by the Education Department of the appointments etc., which, we feel would be better to be reserved to be considered after the management examines individual claims and comes to a finding that each of the appointee has secured appointment by illegal means and thereafter these issues are specifically examined by the management.

6. We are in no way impressed by any of the contentions urged by the petitioners. We are constrained to observe that the rule of audi altrem partem is being used in place and out of place. It is high time one delineates its area of operation. Considering similar contentions one of us (Mohan Kumar, J.) had occasion to state thus in *M.R. Manjunath v. Chairman, B.P.M.C. Bangalore*, (AIR 2001 Karnataka 128)

"..... The rules of natural justice is not spinx like rules which would guillotine every action, the moment it is shown that there is traces of violation of the rule. It would not severe the life from the order, nor is it the sole litmus test to test the validity of an administrative action. The attendant circumstance also should be kept in the backdrop to lend colour to the rules of natural justice. There are several other factors which have also to be borne in mind to ascertain the question whether the failure to observe strict rule of natural justice should invalidate the action. If an authority granted by the State is clearly being misused as a "carte blanche" to perpetuate illegalities and State acts and revokes the authority, the Court should not frown upon the action of the State merely because there may have been infraction of the rules of natural justice. Such exercise of the power by the Court, will be like the Court granting a "carte blanche" to the grantee of the privilege to carry on its misdeeds uncontrolled."

This is a fit case where we are inclined to repeat the said observations. The object of following the rule of natural justice is merely to safeguard that no one shall be condemned unheard. None can have a dispute on this issue. But if the rule is being invoked to protect a right acquired by means of fraud or illegality, then the courts should not lend its arm in aid of such a person. The rule is to advance the cause of justice and not to aid a person to retain an ill-gotten advantage. When one cries to uphold fairplay, he should not be a person who desires to shield a shady benefit. This again is the rule enunciated by the Supreme Court in *M.C. Mehta Vs. Union of India (UOI) and Others*, . The following passage therein is sufficient to highlight the point:

"This Court refused relief and agreed that the High Court was right in not interfering under Article 226 even if there was violation of natural justice. Subba

Rao,J., (a she then was) observed (at SCR P. 189) of (1966) 2 SCR 172: Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, as follows:

"Both the orders of the Government namely the order dated 7.3.1962 and that dated 18.4.1963 were not legally passed the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power u/s 72 of the Act to review an order made u/s 62 of the Act and also because it did not give notice to the representatives of Dharmajugudem village".

His Lordships concluded as follows:

"In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated 16.4.1963? If the High Court had quashed the said order it would have restored an illegal order - it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.

17. Courts are not infrequently faced with a dilemma between breach of the rules of natural justice and the Court's discretion to refuse relief even though rules of natural justice have been breached, on the ground that no real prejudice is caused to the affected party."

If therefore, we interfere with the order on the ground of failure to follow the rule of natural justice, the result would be that certain persons who have been prima facie appointed illegally would be enabled to retain their allegedly ill-gotten benefits. Rule of natural justice is not a shield to protect illegality. The court should not be party to perpetuate illegality by means of issuance of writ of certiorari.

7. The next contention urged is that the Government has no power to issue an order as in the nature of the one impugned herein. We are of the view that this contention is being urged oblivious of Section 33 of the Act. That section reads as under:

"33. Power of Government to call for records and pass order:-(1) Government may call for and examine the record of the Commissioner or of the committee in respect of any proceeding, not being a proceeding in respect of which a suit or application to the court is provided by this Act, to satisfy themselves that the provisions of this Act have not been violated or the interests of the Devaswom have been safeguard and if, in any case, it appears to the Government that any decision or order passed in such proceeding has violated the provisions of this Act or is not in the interest of the Devaswom, they may modify, annul or reverse such decision or order or remit such decision or order for reconsideration:

Provided that the Government shall not pass any order prejudicial to any party unless he has had a reasonable opportunity of making his representations.

(2) The Government may stay the execution of any such decision or order pending the exercise of their powers under Sub-section (1) in respect thereof."

This power is para materia similar to Section 99 of the Madras Hindu Religious and Charitable Endowments Act. While analysing the scope of the said section of the Hindu Religious and Charitable Endowments Act, a Full Bench of this Court in *Achuthan Pillai v. State of Kerala* (1970 KLT 838) stated as under:

".....It is a matter of common knowledge that even from very early times religious and charitable institutions in India came under the special protection of the ruling authority. The rulers of the country always asserted their right to visit these institutions in order to prevent fraud and redress the abuses in their management. In the celebrated Rameswar Pagoda case LR 1-1.A 299 it was pointed out by the Judicial Committee that the former rulers of this country always asserted the right to visit endowments of this kind to prevent and redress the abuses in their management. "There can be little doubt" observed Their Lordships, "that the superintending authority was exercised by the old rulers". In "Hindu and Muhammedan Religious Endowments" by P.R. Ganapathi Iyer, it is observed at page 23:

In Malabar this sovereign right of superintendence was known as Melkoima. Mr. Graem, the Special Commissioner of Malabar defines Melkoima as "the right which the sovereign power possessed over property of which ownership is in others". It is a right of superintendence and the incident of sovereignty..... West J. in *Manohar Ganesh Tambekar v. Lakshmiram Govindaram* in a passage already referred to refers to a document of 1793 as showing that the native Government of the Fort of Pavghar exercised "a visitatorial power to prevent waste of the temple property by either the Tambekar managing the dedicated village or the Shevaks holding the accumulated offerings at the shrines". In an earlier passage the same learned Judge observed that Bombay Regulation XVII of 1827 gave to the Collector a visitatorial power enabling him to enforce an honest and proper administration of religious endowments".

If we realise that the Government has visitatorial power in respect to the temple and its administration, then it is not difficult to trace the power of the Government to issue an order as in the nature impugned herein.

8. This power of the Government to supervise and administer the affairs of a temple is inherent in it by virtue of the fact that it represents the King. In the *Hindu Law of Religious and Charitable Trusts* by B.K. Mukherjee, it is observed thus:

".....The rulers of the country always asserted their right to visit these institutions in order to prevent fraud and redress the abuses in their management. In the celebrated Rameshwar Pagoda case (1874) 1 I.A. 209, it was pointed out by the Judicial Committee that the former rules of this country always asserted the right to visit endowments of this kind to prevent and redress the abuses in their management. "There can be little doubt", observed Their

Lordships, "That the superintending authority was exercised by the old rulers".

This is made relying on the observations of the Privy Council in Rameshwar Pagoda Case (1874) 1 I A 209. Therein Their Lordships had observed that the powers/control exercised by the Ruler over the properties of the devasthanam or temples is not by virtue of any proprietary right but as a de facto Rulers. The Ruler thus exercised a controlling supervision and authority over the temple. he exercised an inherent power to be the trustee of the administration of temple and its affairs. This principle was again applied by the Madras High Court in Sitaram v. Subramania (AIR 1917 Mad 551). Therefore, it is futile for the petitioner to contend that the Government cannot step in if it finds that the acts of the administration is tainted with fraud or illegalities. The resultant position is that the impugned orders are not liable to be interfered with for any of the reasons alleged by the petitioners for want of power in this behalf.

9. But an argument has been built by the leaned counsel relying on the proviso to Section 33 of the Act. The said proviso contemplates a right of being heard before an adverse order is made in exercise of the power under the said section. But, according to us, the question of "being heard" would arise only when the Government, in exercise of the power u/s 33, decides to "modify, anull or reverse" the decision. According to us that stage has not yet arrived. The Government has now pointed out to the Administration, the existence of fraud practised on the Devaswom, in the matter of appointment and it is for the Devaswom now to take appropriate follow up decision in the matter. The impugned order issued by the Government is a stage prior to attracting the requirement of the proviso to Section 33 of the Act. As such, the proviso does not come into play.

10. There may be individual cases which might not be vitiated by fraud or illegalities as in other cases. Such cases will have to be examined in its own merits and decided by the management individually. The general order cannot be treated as an order enabling the management to sweep the entire appointments by the stroke of a pen. They have to examine each case on its own merits and decide whether the appointments be anulled, cancelled or modified. Therefore, the management may treat the impugned order of the Government as a proceeding highlighting the existence of possible circumstances vitiating the appointments of teachers and acting on the same, issue show cause notices to each of the appointees and after granting them an opportunity of being heard decide the individual case on merits of the claim not being solely guided by the vigilance enquiry report. However, we wish to make it clear at the same time that the management is free to use any of the materials collected at the vigilance inquiry for any proceeding being proceeded with on the basis of the impugned notice. But until a final decision is arrived at by the authorities, the appointments of each of the petitioners shall not be terminated.

11. The Writ Petitions are disposed of as above.