
(1936) 08 MAD CK 0023
In the Madras High Court

Sri Mariamman Koil Devasthanam

APPELLANT

Vs

The Madras Hindu Religious Endowments Board

RESPONDENT

Date of Decision : 28-08-1936

Acts Referred:

Madras Hindu Religious Endowments Act, 1926 — Section 70

Citation : AIR 1937 Mad 103 : 166 Ind. Cas. 169 : (1936) 71 MLJ 594

Hon'ble Judges : K.S. Menon, J

Bench : Division Bench

Judgement

K.S. Menon, J.—This is an application to issue a writ of certiorari to the Madras Hindu Religious Endowments Board, to call for the

records in connection with their proceedings dated 1st August, 1935, and to quash the same. The petitioner is the managing trustee of Sri

Mariamman Koil Devasthanam. By an order dated 17th July, 1934, he was removed from the office of trustee by the Madras Hindu Religious

Endowments Board. The petitioner questioned the correctness of the order and applied for the issue of a writ of certiorari to quash the said order

in C.M.P. No. 3053 of 1934, and this Court held that that order of the Board was ultra vires and directed the Board to pay the petitioner Rs. 200

for his costs. The Board appears to have paid the amount of costs. On 1st August, 1935, the Board, acting u/s 70 of the Madras Hindu Religious

Endowments Board Act, assessed the amount of costs and expenses incurred by them in connection with the said proceedings at Rs. 560-14-0

and made a demand of the petitioner for that amount. It is those proceedings of 1st August, 1935K that the petitioner wants to get quashed by this

application.

2. The contention of the Board is that a writ of certiorari is incompetent in this matter, firstly, because the proceedings of 1st August, 1935, were

purely administrative or ministerial, and not judicial, and secondly, because the petitioner has a remedy provided by Section 72(2) of the Act for

questioning the correctness of these proceedings. It is also contended that the Board did not exceed the jurisdiction conferred on it by Sections 68

and 70 of the Act in assessing the amount due by the petitioner and making a demand for it.

3. It has been held in numerous cases that a writ of certiorari does not lie to quash an order, merely ministerial, and that it is intended for the

purpose of adjudicating on the validity of acts judicial. And what are included in the term "judicial" has again been the subject of numerous

decisions. In the case *Queen v. Corporation of Dublin* (1878-1879) L.R. (Ireland) Vol. II, pp. 371 at 376, May, C.J., observed as follows:

It is established that the writ of certiorari does not lie to remove an order merely ministerial, such as warrant, but it lies to remove and adjudicate

upon the validity of acts judicial.

4. In this connection, the term "judicial" does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law,

but for the purpose of this question judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances,

and imposing a liability or affecting the rights of others. And if there be a body empowered by law to enquire into facts, make estimates to impose

a rate on a District it would seem to me that the acts of such a body involving such consequence would be judicial acts. In *King v. London County*

Council (1931) 2 K.B. 215, Slesser, L.J., analysing and explaining the dictum of Atkin, L.J., observed:

Atkin, L.J. (as he then was) in *Rex v. Electricity Commissioners* (1924) 1 K.B. 171, lays down four conditions under which a rule for a certiorari

may issue. He says : "Wherever any body of persons" (first) "having legal authority" (secondly) "to determine questions affecting the rights of

subjects, and" (thirdly) "having the duty to act judicially," (fourthly) "act in excess of their legal authority" - the sub-divisions are my own - "they

are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs".

5. In the same case Scrutton, L.J., put it as follows:

It is not necessary that it should be a Court in the sense in which this Court is a Court; it is enough if it is exercising, after hearing evidence, judicial

functions in the sense that it has to decide on evidence between a proposal and an opposition.

6. These decisions have been followed in this Court in numerous cases Venkataratnam v. The Secretary of State for India (1929) 60 M.L.J. 25 :

ILR 53 Mad. 979, Muniswami Chetty v. The Board of Revenue, Land Revenue and Settlement, Madras and the Collector of Chittoor (1931) 66

M.L.J. 468 : ILR 57 Mad. 791 and Thirumala Chettiar v. Chellam Pillai (1933) 66 M.L.J. 468 : ILR 57 Mad. 791, etc. Applying these tests to

the facts of this case, it has to be seen whether this is a case in which a writ can be issued. Section 68 of the Madras Hindu Religious Endowments

Act provides that:

All costs and expenses incurred in connection with legal proceedings in respect of any religious endowment to which a Board or Committee is a

party shall, notwithstanding anything contained in Section 74, be payable out of the funds of such endowment.

7. Section 70 provides that:

The costs, expenses and contributions payable under Sections 68 and 69 shall be assessed on and notified to the trustee of every math and temple

in the prescribed manner.

8. It is under these sections that the Board purported to act when it assessed the amount due by the petitioner and made a demand on 1st August,

1935. This cannot be said to be a determination of any question affecting the rights of subjects, much less can it be said that in doing so they were

acting judicially or they had a duty to act judicially. There were no facts to be enquired into, there was no question of any ""proposal"" on one side or

of ""opposition"" on the other, and not even a notice was necessary to be given to the petitioner before the amount was assessed or a demand made.

Further in view of Sections 68 and 70 of the Act, it cannot at all be contended that the Board had in any way exceeded the authority given to them

by law in assessing the amount and making a demand for it. The proceedings of 1st August, 1935, cannot therefore be said to be such that a writ

of certiorari can be issued in respect of it.

9. Another contention raised by Mr. Subba Rao is that, as the petitioner has another remedy provided for by the statute itself, a writ cannot be

issued. Section 70(2)(b) provides:

On receipt of a requisition under Clause (a), the collector shall issue a notice to the trustee concerned requiring him, within 15 days from the

service of such notice, either to pay the amount mentioned in the requisition and specified in the notice or to state in writing his objections, if any,

thereof.

10. Clause (d) provides:

If, within the said period, an objection in writing is received by the collector from the trustee with regard either to his liability or to the amount

specified in the notice, the collector shall transmit such objection to the President of the Board.

11. And Clause (e) provides:

The President of the Board shall consider the objection so transmitted and communicate to the collector his decision confirming, withdrawing or

modifying the original demand.

12. If therefore the petitioner had any valid objection to the assessment and demand made by the Board, he had a right to object to it, and such

objections would have been heard and determined by the President of the Board. Mr. Viswanatha Aiyar for the petitioner contends that this

remedy, being more or less in the nature of a review, cannot be said to be a separate remedy. I am unable to agree with him. It is not the Board

but only the President of the Board who, under the statute, has the right to hear and determine the objections to the assessment and the demand,

and he is entirely a different person from the Board.

13. It would also appear that the petitioner availed himself of the remedy provided by the Act u/s 70(2)(d) and filed an objection petition and that it

had been heard and decided by the President of the Board and the original demand confirmed on a subsequent date, namely, 10th February,

1936. Mr. Subba Rao pointed out that, if at all, it is that order alone that could be the subject of a writ. Mr. Viswanatha Aiyar therefore made an

oral application that he should be allowed to amend this application so as to make it refer to the proceedings of the Board dated 10th February,

1936. That was opposed by the respondent. As the petitioner was fully aware of the proceedings of 10th February, 1936, before he filed this

application on 23rd March, 1936, and he chose to call into question the proceedings of 1st August, 1935 only and not those of the later date, I do

not think he is entitled at this stage to convert this petition into one for quashing the proceedings of 10th February, 1936, even if an amendment

could be allowed in petitions of this kind. It is thus clear that the petitioner had another remedy provided for by the statute itself and that he availed

himself of it. It is well settled that a writ of certiorari should only be granted when no other suitable remedy exists. Vide *Besant v. Advocate-*

General of Madras (1919) 37 M.L.J. 139 : L.R. 46 IndAp 176 : ILR 43 Mad. 146 and *Govindaswami Pillai v. Ramalingaswami* (1913) 62

M.L.J. 644. For this reason also, it must be held that this is not a case in which a writ should be issued.

14. Even assuming that the proceedings of 1st August, 1935, should be considered to be judicial and that the petitioner had no other remedy, the

question is whether the petitioner has a good case on the merits. The amount for which demand was made included not only the expenses incurred

by the Board but also the amount of costs ordered to be paid by the Board to the petitioner. Mr. Viswanatha Aiyar contends that u/s 68 it is only

the amount which the Board had spent and not what they had to pay to others that they could get from the endowment concerned. There would

have been some force in this contention if Section 68 referred only to the costs incurred in connection with legal proceedings to which the Board

was a party, but the wording of Section 68 is ""All costs and expenses incurred in connection with legal proceedings...."" These words are wide

enough to cover the amounts which the Board had to spend and also which they had to pay to others. There is therefore no substance in this

contention also. It is clear from what has been said above that the Board did not exceed its jurisdiction in assessing and making a demand for the

amount and that the proceedings which the petitioner wants to get quashed in this petition are not judicial at all but only ministerial or administrative,

and that the petitioner had a remedy provided by the same statute to have his objections heard and decided and that he availed himself of it. It

follows that no writ should be issued. The petition is therefore dismissed with costs. Advocate's fee Rs. 100.