

**(1905) 02 MAD CK 0002**  
**In the Madras High Court**

Subba Naidu

APPELLANT

Vs

Gopalaswamy Naidu

RESPONDENT

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**Date of Decision :** 08-02-1905

**Acts Referred:**

**Citation :** (1905) 15 MLJ 185

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**Judgement**

1. This appeal has been argued at considerable length but the main questions arising for determination may be shortly disposed of.

2. It was first contended that the appointment of the defendant Gopalaswami Naidu by three out of the five members constituting the committee of

the Madura Meenakshi temple was absolutely null and void because it was not made at a meeting but by the votes of the three members given on

papers sent in circulation.

3. We agree in the opinion that the committee as a body constituted under statutory authority should, in the absence of specific provisions in the

statute, follow as far as practicable in the transaction of its business, the usual procedure adopted by public bodies entrusted with duties of a more

or less public character. It would follow therefore that the committee should ordinarily transact its more important business at a meeting held after

due notice to the members and it would specially be incumbent upon it to do so, if any member so required. In the event of such a member's

request not being complied with it would be open to him to challenge the propriety of any action taken by the committee in disregard of his

requisition and if necessary, by legal proceedings to restrain the other members of the committee from giving effect to their decisions. But We are

unable to accept the contention that the transaction otherwise than at a meeting

even of such important business as the appointment of a manager is necessarily void and incapable of being adopted and approved of by the other members who may not at first have agreed to it. There is nothing in the Religious Endowments Act (Act XX of 1863) which compels us to adopt such an extreme view nor does the decision in *Thandavaraya Pillai v. Subbayyer* ILR 23 M. 483 on which much stress was laid by the appellant really support the contention. The fact that the dismissal of the trustee was not resolved on at a meeting is, no doubt, relied on in that case as one of the grounds of the decision but other grounds even more material are also given. We do not think that we should look upon the committee strictly as a corporation so as to import into the consideration of cases like the present, the technical rules applicable to such bodies in England, nor can the English precedents to which our attention has been drawn be treated as direct authorities especially as they in most cases depend upon the particular constitution of the bodies concerned, their previous course of conducting business and similar considerations. Even if we do look to English precedents the cases reported in *Router v. Electric Telegraph Company* 26. L.J. Q.B. 46. *Browning v. The Great Central Mining Company* 29.L.J., Ex.399 and *In Re Great Northern Salt and Chemical works*, Ex parte Kennedy 44, Ch. D. 472, so far as they go would rather support the view we have stated. No doubt the two former cases relate to delegated authority but the third relates to the action of the corporate body itself. In this view it is necessary to consider whether the finding of the Subordinate Judge is right to the effect that the two members of the committee who at first did not join in the order of appointment but in fact protested against it, afterwards accepted it and acted accordingly. We have no hesitation in agreeing with the Subordinate Judge the evidence on the point being overwhelming. In repeated communications from members of the Committee including the originally dissentient members the defendant was referred to in express terms as the manager actually exercising the duties of the office and instructions were given to him in reference to the performance of those functions without any hint that he was not recognised as properly appointed. For instance in the original order appointing him he was required to furnish security within two months. When the first security bond submitted by him was disapproved, three

members of the committee including the two originally dissentient members extended the time more than once. What is still more decisive is the course adopted by the committee in removing the defendant from office. Formal charges were drawn up against him, explanation was obtained and upon consideration thereof he was first suspended and finally his dismissal was ordered. This is a clear indication that the originally dissentient members had accepted him as the manager.

4. The argument that the appointment never took effect because the security required was never actually accepted, is untenable. The defendant was placed in full possession of his office and was allowed to exercise its functions for many months.

5. There remains the question whether the dismissal was made for good and sufficient grounds. No less than eighteen charges were drawn up against him by the committee but only the first two of these appear to have been seriously relied on before the Subordinate Judge. He, however,

dealt with all the charges and found in the defendant's favour in respect of each of them. Before us some of those not pressed in the Lower Court

were also relied on, namely, the 4, 5, 8, 13, 16 and 18. Without expressing concurrence in all the arguments of the Subordinate Judge we arrive at

the conclusion that no sufficient ground for dismissing the defendant has been established. No doubt the 1st and 2nd charges, if made out, would

justify dismissal, but the plaintiff has altogether failed to establish that the defendant was guilty of any misappropriation of trust funds. The

appellant's Vakil practically conceding this argued that in the case of this first charge the disbursement of the sum of Rs. 400 was in contravention

of one of the directions of the Committee in the order of appointment (Exhibit A). The direction was that the manager (the defendant) may himself

sanction expenditure of about Es. 100 without the sanction of the members for urgent repair work, &c. We doubt whether the disbursement of

Rs. 400 referred to in the first charge was in contravention of this provision; but if it was, it was only an irregularity. A receipt was taken for the

money and it was in fact applied for the purposes of the trust.

6. The second charge relates to a sum of Rs. 50 which is also clearly shown to have been applied for the purpose of the trust and a receipt was

taken for it though it was not immediately entered in the daily accounts. Though

we accept the contention that it is the duty of Committee to see that the accounts are properly kept yet we do not consider that the omission to enter this sum in the accounts at once was dishonest or intentional.

The defendant was at the time absent from his head-quarters on duty connected with his office and the amount was drawn by a clerk under his orders on a written voucher given by the clerk. The 8th charge may be next noticed. It relates to the delay or omission of the defendant to submit certain accounts to the committee. The evidence as to the system of keeping accounts and the persons who have to keep them is very meagre.

Apparently the honorary managers who held office before the defendant was appointed on a salary, did not themselves maintain any accounts. These were kept by the Tahsildar under the manager. Whether a change was introduced or not when the defendant was appointed does not appear and from the explanation given by the defendant it is obvious that the old system of the Tahsildar's keeping the accounts was continued.

Considering that the defendant was paid a salary, it was prima facie his duty 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. In so far as copies of the daily accounts are concerned the defendant's explanation for their not being sent in due course for some two months is not satisfactory but in all probability the difficulty experienced by the defendant was due to the differences which had arisen between him on the one hand and the committee on the other, and to the difficulty which, he, therefore, found in enforcing obedience to his orders on the part of his subordinates. We may here point out that the record indicates that the committee has been exercising a degree of minute control over the details of the manager's section in administering the trust which is hardly consistent, with the respective responsibilities imposed on the trustee and on the committee by the provisions of Act XX of 1863.

*Panduranga v. Nagappa* ILR 12 M., 366. The proper course would seem to be for the committee to lay down general instructions for the guidance of the trustee and see that they are followed but without minute interference with the discretion of the trustees in the actual administration of the trust.

7. The 18th charge is that the defendant did not furnish security as required. As

already stated the defendant within the time fixed submitted a registered security bond. Certain objections were taken to it, and it was rejected and time was given to the defendant to furnish other security.

With reference to this the defendant made a reference to the committee to which they made no reply until after they resolved upon dismissing him

when they, curiously enough, made his failure to furnish security, one of the grounds of his dismissal. This was manifestly not a fairway of treating

him. The other charges relied on before us are so comparatively unimportant that we do not consider it necessary to notice them in detail. The are

sufficiently dealt with by the Subordinate Judge.

8. In the course of the argument the appellant's Vakil drew our attention to the observations in the case of Lettersteadt v. Broers L.R., 9 A.C. 371

as to the removal of a trustee apart from any specific misconduct, if his continuance in office would not be for the benefit of the trust.

9. These observations have no application to a case such as the present, Where the Court had only to decide on the sufficiency of the grounds on

which the dismissal was ordered and was not called upon to exercise its discretionary power of removing an unsuitable trustee. Even were it

otherwise, the fact that the defendant has, since the decision of the Subordinate Judge was given, resigned his office, would render it unnecessary

to notice the argument further. Without imputing improper motives to the members of the committee, we think that they were unreasonably anxious

to find grounds for dismissing the defendant. Considering the importance of the duties devolving on them with reference to the removal of a trustee

their proceedings against the defendant might well have been characterised by more reasonableness and moderation. It is scarcely necessary to

add that undue interference and arbitrary action on the part of the committee makes it difficult to secure the services of competent and trustworthy

men for the office of the trust even when a salary is attached to it.

9. The appeal fails and is dismissed with costs.