

(1967) 03 MAD CK 0017
In the Madras High Court

T. Rajagopalan

APPELLANT

Vs

S. Nagarajan, Executive Officer, Sri Ranganathaswamy
Devasthanam, Srirangam and Others

RESPONDENT

Date of Decision : 07-03-1967

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 9

Citation : (1967) 80 LW 668 : (1967) 2 MLJ 259

Hon'ble Judges : P.S. Kailasam, J

Bench : Single Bench

Judgement

P.S. Kailasam, J.—The petition is filed by one of the worshippers of Sri Ranganathaswamy Temple, Srirangam for the issue of a writ of quo

warranto directing the 1st respondent to show cause under what authority he is holding the office of the Executive Officer of Sri Ranganathaswami

Devasthanam. The 1st respondent was serving as District Supply Officer. He was transferred and posted as an Executive Officer of Sri

Ranganathaswamy Temple on 8th December, 1966. The appointment is challenged on the ground that the appointing authority for executive

officers is only the Commissioner and that the Government has no power to appoint Executive Officers.

2. Section 9 of the Madras Hindu Religious and Charitable Endowments Act empowers the Government to appoint the Commissioner and such

number of Deputy and Assistant Commissioners as they think fit. Section 45(1) of the Act provides as follows:

Notwithstanding anything contained in this Act, the Commissioner may appoint subject to such conditions as may be prescribed, an Executive

Officer for any religious institution other than a math or a specific endowment attached to a math.

Sub-section (4) Section 45 says that the Commissioner may for good and sufficient cause suspend, remove or dismiss the Executive Officer. It

may be seen that while the power to appoint the Commissioner, Deputy and Assistant Commissioner is conferred on the Government, Section 45

provides that ""Notwithstanding anything contained in this Act, the Commissioner may appoint subject to such conditions as may be prescribed, an

Executive Officer for any religious institution."" This power is conferred on the Commissioner"" notwithstanding anything contained in this Act.

Section 74 of the Act confers on the Commissioner power to appoint a salaried executive officer, who shall be a person professing the Hindu

religion, to every institution notified under Chapter VI of the Act. The words used in Section 74 are ""the Commissioner shall appoint."" While in

Section 45 the words used are ""the Commissioner may appoint. The power conferred on the Commissioner u/s 45 to appoint executive officers is

notwithstanding anything contained in the Act."" I was submitted by the learned Counsel for petitioner that there is no other provision which deals

with the appointment of executive officers. Section 12 which, in his submission would not relate to the appointment of executive officers, states that

the Commissioner, Deputy Commissioners, Assistant Commissioners and other officers and servants including executive officers of religious

institutions employed for the purpose of this Act shall be servants of the Government and their salaries, allowances, pensions and other

remuneration shall be paid in the first instance out of the consolidated fund of the State. This section declares servants of religious institutions under

the Act as servants of the Government. The Government has power to appoint its own servants, though Section 12 does not deal specifically with

the power of appointment by the Government. The power may be inferred. This construction is probalised by the wording of Section 45

notwithstanding anything contained in the Act, the Commissioner may appoint.

3. If there was no other provision relating to the appointment of Executive Officers in the Act, there would not have been any necessity to use the

words ""notwithstanding anything contained in this Act."" Section 12 declares that all the servants of the religious institutions shall be Government

servants. If construed as impliedly conferring the power on the Government to appoint them, the use of the words "notwithstanding anything contained in this Act" would be perfectly justified.

4. Taking into account, the wordings of the Section 45 "notwithstanding anything contained in the Act" along with Section 74 which makes it obligatory on the Commissioner to appoint the Executive Officer, the meaning of Section 12 will be sufficiently clear. Section 12 in my opinion, in stating that the servants of religious institutions shall be servants of the Government impliedly would confer power of appointment on the Government. Apart from this, if the contention of the petitioner is accepted that the Commissioner is the only appointing authority, the Commissioner would not be entitled to appoint Government servants by transfer as executive officers. It is admitted that persons in Government service are transferred by the Government and posted as executive officers. These appointments are consistent with the view that Section 12 empowers the Government to appoint servants of religious institutions. In this view, it is unnecessary to consider the rules framed by the Government in G.O. No. 3017, dated 19th July, 1962. When the Act itself empowers the Government to make appointment, the validity of the rules providing for the appointment of first-grade executive officers cannot be questioned. In the circumstances, the appointment of the 1st respondent as executive officer is legal and cannot be impugned.

5. It was next contended by the learned Counsel for petitioner that the requirements of G.O. No. 4055, dated 23rd September, 1961 relating to furnishing of security by officers had not been complied with. Section 2 requires that every executive officer appointed either temporarily in the place of any other executive officer or otherwise for a religious institution under any of the provisions of the Act or in pursuance of any scheme settled or deemed to be settled there under shall furnish security and execute bond in the name of the Governor of Madras, Government is also empowered to exempt from such conditions as to the furnishing of security or to accept the security furnished by other parties. Section 4(2) provides that no person first appointed to any post for which security has to be furnished shall assume office unless he furnished security fixed for the post within 15 days of the receipt of the order of appointment or unless he is

exempted under Rule 2. This sub-rule requires that the person appointed should furnish security within 15 days of the receipt of the order or that he should be exempted under the provision before assuming office. Rule 5 enables the Government to extend the time for furnishing security or additional security.

6. Rule 4(2) makes it incumbent on the first appointed person to any post for which security has to be furnished, to furnish security within the time prescribed or get himself exempted under the proviso to Rule 2 before assuming office. Without furnishing security or getting himself exempted, he shall not assume office. Rule 5 enables the Government to extend the time for furnishing security or for additional security. While Rule 5 enables extension of time for security or additional security, it does not empower the Government for extending the time for obtaining exemption under Rule

2. A reading of Rule 2, Sub-rule (2) of Rule 4 and Rule 5 makes it clear that the person first appointed to a post for which security has to be

furnished shall not assume office unless he has furnished security or is exempted from furnishing security by the Government. The learned

Government Pleader submitted that the wording "shall" in Rule 4(2) should be read as "may." I am unable to accept the contention for the

condition under which a person shall assume office is clearly specified in the rules. There is no warrant for considering that the requirement in

Section 4(2) is only directive. It is not disputed that the rules are framed under Clause (xvi) of Sub-section (2) of Section 116. Clause (xvi) of Sub-

section (2) of Section 116 empowers the Government by notification to make rules for the purpose of providing security to be furnished by the

officers and servants employed for the purpose of this Act. The rules were framed under Clause (xvi), Sub-section (2) of Section 116 and,

therefore, have statutory force. The learned Government Pleader today informed me that a communication has been addressed for exempting the

1st respondent from the operation of rules relating to furnishing of security. But no such exemption had been granted under Rule 4(2). Not only on

the date when he assumed office, but also upto this date the requirements of rules have not been complied with. As there is statutory bar against

the 1st respondent assuming office without complying with the provision of Rules 2 and 4, it has to be held that he is illegally holding office and on

this ground writ of quo warranto will have to be allowed.

7. The petition is allowed. There will be no order as to costs.