

(1971) 06 MAD CK 0003

In the Madras High Court

Case No : Writ App. No. 286 of 1969

The Commissioner, H.R. and C.E. (Admn.) Dept, Madras

APPELLANT

Vs

B.R. Venkatachalapathi and others

RESPONDENT

Date of Decision : 23-06-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 92
Constitution of India, 1950 — Article 14, 15, 16, 226

Citation : (1972) ILR (Mad) 115

Hon'ble Judges : Venkataraman, J;Gokulakrishnan, J

Bench : Division Bench

Advocate : S. Palaniswami and K. Alagiriswami, for the Respondent

Final Decision : Allowed

Judgement

Venkataraman, J.—This appeal relates to the appointment of one T.K. Ramaswami Gounder (sixth respondent) as one of the Trustees of

Sangameswaraswami temple, Bhavani town. Originally the appointment of trustees was made by the Area Committee, Salem under the provisions

of the Madras Hindu Religious and Charitable Endowments Act, 22 of 1959, but in 1967, under S. 46 of the Act, the Commissioner included it in

the list of temples whose annual income for the purpose of contribution was not less than Rs. 20,000. Thereupon, under S. 47, the power of

appointment of the trustees vested with the Commissioner. Accordingly, the Commissioner invited applications for the appointment of five trustees.

There are thirteen applications. By an order dated 16th November, 1968 the Commissioner (Thiru A. Radhakrishnan) appointed five of the

thirteen persons to constitute the Board of trustees, for a period of three years, with effect from the date of the order. However, one of them, T.S.

Chinnappa Gounder, expressed his inability to accept the post by a letter dated 21st November, 1968, presented in person to the Commissioner.

The Commissioner thereupon selected the sixth respondent herein, Thiru T.K. Ramaswami Gounder, as a trustee by an order R.C. No. 48057/68,

A-1 dated 21st November, 1968. The actual order runs as follows:

Whereas Thiru T.S. Chinnappa Gounder, son of Sengoda Gounder, appointed as trustee of the above temple in the above proceedings has not

accepted the appointment and whereas the vacancy has to be filled up, in modification of the orders issued in the proceedings cited, and in exercise

of the powers vested in him under S. 47 of the Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act 22 of 1959) the

Commissioner, Hindu Religious and Charitable Endowments (Admn. Dept.) Madras, hereby appoints Thiru T.K. Ramaswami Gounder, son of

Kandaswami Gounder, as trustee of the above Devastanam for a period of 3 (three) years from the date of this order.

T.K. Ramaswami Gounder was one of the thirteen persons who had applied. The Commissioner, before selecting him did not invite further

applications and considered only the thirteen applications originally received.

2. B.R. Venkatachalapathi, who was one of the thirteen applicants and had not been appointed as a trustee, filed W.P. 4601 of 1968, B.R.

Venkatachalapathi v. Commissioner H.R. and C.E. (Admn.) Dept. Madras, to quash the orders dated 16th November, 1968 and 21st

November, 1968. Kailasam, J. who heard the writ petition, refused to quash the order dated 16th November, 1968, but quashed the order dated

21st November, 1968, mainly on the following grounds: (i) that when T.S. Chinnappa Gounder intimated his inability to discharge the functions of a

trustee, a casual vacancy arose and for filling up that vacancy the Commissioner should have invited applications once more and (ii) that allegations

had been made against T.K. Ramaswami Gounder that he was not a person fit to be appointed as a trustee and that there was no indication in the

order of the Commissioner, dated 21st November, 1968 that he considered any of these reasons or the comparative merits of the various

contestants. He therefore, directed the Commissioner to fill up the casual vacancy according to law. Aggrieved by this order the Commissioner has

filed this appeal. B.R. Venkatachalapathi, the writ petitioner, is the first

respondent and T.K. Ramaswami Gounder is the sixth respondent.

3. In order to deal with the contentions raised in the appeal it will be convenient to set out the whole of S. 47 of the Act:

47. Trustees and their number and term of office: (1) Where a religious institution included in the list published under S. 46 or in respect of which

no Area Committee exercises powers and discharges duties, has no hereditary trustee, the Commissioner shall constitute a Board of Trustees

consisting of not less than three and not more than five persons appointed by him;

Provided that the Commissioner may, pending the Constitution of such a Board of Trustees appoint a fit person to perform the functions of the

Board of Trustees.

(2) Where in the case of an institution included in the list published under S. 46, having a hereditary trustee or trustees, the Commissioner, after

notice to such trustee or trustees and after such inquiry as he deems adequate, considers for reasons to be recorded, that the affairs of the

institution are not and are not likely to be properly managed by the hereditary trustee or trustees, the Commissioner may, by order, appoint such

member of non hereditary trustees as he thinks necessary.

(3) Every trustee appointed under sub-S. (1) and subject to the result of an application, if any, filed under sub-R. (4) every non-hereditary trustee

appointed under sub-S. (2) shall hold office for a term of five years unless in the meanwhile the trustee is removed or dismissed or his resignation is

accepted by the Commissioner or he otherwise ceases to be a trustee.

(4) Where the Commissioner by order, appoints a non-hereditary trustee or trustees, the hereditary trustee or trustees may within 30 days of the

receipt of the order, file an application to the court to set aside or modify such order:

Provided that the court shall have no power to stay the order of the Commissioner pending the disposal of the application.

(5) Where a vacancy arises in the office of a non hereditary trustee appointed under Sub-sec. (2), the Commissioner shall not fill up such vacancy

unless for reasons to be recorded, he considers it necessary to do so. A non-hereditary trustee appointed in the vacancy shall be deemed to have

been appointed under Sub-sec. (2) and the provisions of Sub-Sec. (3) and (4)

shall apply accordingly.

4. It will be seen that the Section itself does not prescribe any particular mode which the Commissioner should follow before constituting the Board

of Trustees of filling up the vacancy, if one of them expresses his inability to function as a trustee. The rules also are silent on this point. The letter

dated 21st November, 1968 of T.S. Chinnappa Gounder has not been placed before us, nor has a copy thereof been furnished to us. The first

respondent (B.R. Venkatachalapathi) contends that the effect of the order dated 16th November, 1968 was that T.S. Chinnappa Gounder

became automatically a trustee by virtue of that order itself and that the letter dated 21st November, 1968 would amount to his resignation. On the

other hand, on behalf of the appellant and the sixth respondent, it is urged that even after the order dated 16th November, 1968 it was necessary

for T.S. Chinnappa Gounder to assume charge as trustee, that when he expressed his inability to join as a trustee, the post was not filled up at all

and that therefore there could be no question of resignation. Kailasam J. has observed:

The appointment takes effect from the date of appointment and does not depend upon the applicants accepting it or not, for the acceptance is

presumed as the applications are considered after the persons apply for the post. When T.K. Chinnappa Gounder, who was appointed a trustee

intimated his inability to discharge the functions of a trustee, a casual vacancy arose. When a casual vacancy arises, the usual procedure is to notify

the vacancy, call for applications and on the report of the authorities, for the Commissioner to appoint the trustee. In this case the plea on behalf of

the Commissioner is that he had the report regarding the 13 applicants for the five posts and he selected one among the remaining applicants. But

this is not the usual procedure for filling up a casual vacancy for between the date on which the applicants were invited originally and the date of

falling of the casual vacancy, there may be other persons interested in applying for the posts and there is no justification for not filling up the casual

vacancy in the usual manner after calling for the applications.

5. It seems to us that the order dated 16th November, 1968 merely enabled T.S. Chinnappa Gounder to assume charge as a trustee and that, if

before assuming charge, he expressed his inability to function as a trustee, it

must be held that he did not become a trustee at all. But this is really not important; the question of substance is whether on the facts of this case, it was necessary for the Commissioner to invite fresh applications. It seems to us that when there are no statutory provisions, or rules having the force of statutory provisions, on the question, no objection could be taken to the procedure actually adopted by the Commissioner in this case. He was a person empowered by S. 47 to constitute a Board of Trustees or to fill up a vacancy. For practical purposes only five days had elapsed after the order, dated 16th November, 1968 and it cannot be said that the Commissioner was bound to call fresh applications. The first ground of attack on the Commissioner's order dated 21st November, 1968 therefore fails.

6. The second ground on which the order has been set aside is a more substantial one and the learned Judge observes thus:

Whether the 6th respondent is guilty of any acts which would render him not a fit person to be appointed as a trustee or whether those allegations

were made by parties who are inimically disposed towards the 6th respondent cannot be gone into in this petition. But it is incumbent on the

Commissioner in making the appointment to consider the comparative merits of the persons who are eligible for appointment as trustees and make

the appointment. There is no indication that the Commissioner considered either any of the qualifications or the disqualifications of the applicants

who were included in the list that was before him. The order of the appointment of the 6th respondent as a trustee is in the nature of a quasi judicial

function and it is incumbent upon the Commissioner to give reasons for such an order.

The order of the Commissioner which states ""I hereby appoint T.K. Ramaswami Gounder as trustee from the date of the order"" does not at all

throw any light regarding the consideration of the comparative merits of the applicants.

7. Factually, the Commissioner (Thiru A. Radhakrishnan), in his counter affidavit in the writ petition, has stated that he took into consideration all

the relevant materials and that there were not sufficient materials to show that the sixth respondent was unfit to be appointed as a trustee. We

accept that affidavit. The only question, therefore, is whether he should have

mentioned in the order itself that he had considered the merits and demerits of the sixth respondent. We are of opinion that he need not have. There is nothing in S. 47 itself requiring him to set out the merits and demerits of the various applicants or of the persons whom he appoints as trustees. It will be noted that under S. 47 (2) he has to give reasons, where he thinks it necessary to appoint a non-hereditary trustee or trustees for an institution having a hereditary trustee or trustees. He has to give reasons that the affairs of the institution are not and are not likely to be properly managed by the hereditary trustee or trustees. Similarly under sub-S. (5), where a vacancy arises in the office of a non-hereditary trustee appointed under sub-S. (2) (that is, an institution already having a hereditary trustee or trustees), the Commissioner shall not fill up such vacancy unless for reasons to be recorded, he considers it necessary to do so. No such provision has been enacted requiring the Commissioner to give reasons for selecting a particular trustee or trustees. It is left entirely to his discretion and the legislature has thought it fit, in its wisdom, to entrust him with the sole power of appointment. He is a high-ranking authority and, therefore, the legislature expects him to make the appointment properly, and so long as he does not act in bad faith, the appointment made by him cannot be questioned, and there is nothing to require the court to hold that he should record his reasons for his appointing a particular person. The main reason which influenced Kailasam, J. to hold that he should give reasons is that, in the opinion of the learned Judge, "the order of appointment of the sixth respondent, as a trustee is in the nature of a quasi-judicial function". This renders it necessary to examine that question more fully. But we may Straightaway state our conclusion that in making the appointment of a trustee, the Commissioner is not exercising any quasi-judicial function, but is only exercising an administrative power, and that his order is not liable to be set aside by a writ of certiorari in the absence of mala fide.

8. The principles seem to be well settled, though their application to a particular case may sometimes be difficult. Though there are numerous decisions, for our purpose, it is sufficient to refer to the present moment to refer to the three decisions of the Supreme Court cited by the learned counsel for the appellant - Province of Bombay Vs. Kusaldas S. Advani and Others, , Radeshyam Khare and Another Vs. The State of Madhya

Pradesh and Others, A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

9. The classical statement is that of Lord Justice Atkin in the King v. Electricity Commissioners (1924) I.K.B. 171.

Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act

in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.

10. This passage has been cited with approval in numerous decisions and accepted is laying down the correct test. This test can be split up into

four subsidiary tests; (i) persons having legal authority; (ii) to determine questions affecting the rights of subjects, (iii) having the duty to act

judicially, and (iv) act in excess of their legal authority. It has been pointed out that of these tests, the third test, namely, having the duty to act

judicially is the most important, because it is that test which distinguishes an act which is subject to writ jurisdiction and a purely administrative act.

Thus, an authority doing a purely administrative act will usually have legal authority to determine questions affecting the rights of subjects and may

sometimes act in excess of his legal authority, but it is not amenable to correction by a writ. The essence of the test therefore is that the authority

must have a duty to act judicially. It has been stressed in these decisions that this has to be tested primarily on a construction of the words of the

statute under which the authority acts. Thus, in Province of Bombay v. Kusaldas S. Advani (1959) S.C.R. 621, the local Government

requisitioned a flat under S. 3 of the Bombay Land Requisition Ordinance (V of 1947), and allotted the premises to one, Mrs. C. Dayaram, who

was a refugee from Sind. Earlier one Ismail was the tenant of the flat under the owner Dr. M.D. Vakil. Ismail had assigned his tenancy to the writ

petitioner, Advani, and his relatives. They were also refugees from Sind and the assignment was by a mutual and bona fide arrangement. The effect

of the order of the Government was to displace the assignment in favour of Advani and his relatives. S. 3 of the Ordinance ran thus:

If, in the opinion of the Provincial Government, it is necessary or expedient to do so, the Provincial Government may by order in writing, requisition

any land for any public purpose.

11. The writ petition was allowed by Bhagwati, J. and the order was confirmed in appeal regarding Advani and his relatives. The State therefore filed an appeal to the Supreme Court. The main contention on behalf of Advani throughout was that the Provincial Government could requisition the flat only for any public purpose, that the existence of the public purpose was not left solely to the subjective opinion of the Government, that it had to be established objectively as a collateral fact on the proof of which alone they could requisition and that, therefore, it was open to the court to examine whether the public purpose had been made out. Four of their Lordships (Kania C.J., Fazl Ali, Patanjali Sastri and Dass, JJ.) disagreed with this contention, while the other two (Mahajan and Mukherjea, JJ.) agreed. Their Lordships who were in the majority held, on a construction of S. 3 that the existence of the public purpose was also a matter for the opinion of the Provincial Government, equally, like the necessity or expediency for the requisition. It was mainly for that reason that the appeal was allowed. There is, however, an elaborate discussion, not merely of the wording of the statute, but also of the principles governing the issue of a writ. It is stressed that a writ can be issued only if the act is a quasi-judicial act, and not if it is purely an administrative one. The other two learned Judges agreed with this proposition, but pointed out that, on the language of Sec. 3 it had to be held that the existence of the public purpose was not left solely to the opinion of the Provincial Government, but only the necessity or the expediency of the requisition was left to their opinion and that the existence of the public purpose was a collateral fact which had to be made out by objective standards before the local Government could proceed to requisition. Kania, C.J. observed (page 632,) ½

The respondent's argument that, whenever there is a determination of a fact which affects the rights of parties, the decision is quasi-judicial, does not appear to be sound..... When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it; the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari.....It seems to me that the true position is that when the law under which the authority is making a decision itself requires a judicial approach, the decision will be quasi-judicial.

Again (at page 636) :½

There appears to be nothing in the Ordinance to show that in arriving at its decision on this point the Provincial Government has to act judicially.

Fazl Ali, J. observed (at page 641):½

The framers of the Ordinance never intended to impose any duty on the Provincial Government to determine judicially whether a certain purpose is a public purpose or not.

At page 643 he observes½

It is well settled that where an Act or regulation commits to an executive authority the decision of what is necessary or expedient and that authority makes the decision, it is not competent to the courts to investigate the grounds or the reasonableness of the decision in the absence of an allegation of bad faith.

12. At page 644, Fazl Ali, J. quotes from Lord Halsbury in *Mayor, etc of Westminster v. London & North Western Ry Co.*, (1905) A.C. 426.

Where the legislature has confided the power to a particular body with a discretion how it is to be used, it is beyond the power of any court to contest that discretion. Of course, this assumes that the thing done is the thing which the legislature has authorised.

13. Patanjali Sastri, J. agreed with Kania, C.J. Das, J. observed, on the question of construction, that the words "to do so" in S. 3 of the

Ordinance meant and stood for the words "to requisition any land for any public purpose". At page 703 his Lordship observed:

If the existence of a public purpose had to be determined as an objective fact and if that determination were liable to be subjected to the scrutiny of

the court in legal proceedings, then such a procedure would have quite effectively frustrated the very object set forth in the second preamble by

preventing the Provincial Government by means of protracted legal proceedings from taking immediate action for making provision for requisition

of land.....

14. At page 705, his Lordship observed½

The formation of opinion on the entire matter was purely subjective and the order of requisition was to be founded on this subjective opinion and

as such was a purely administrative act.

15. At page 706, his Lordship quotes from a decision:

No doubt when a power has been conferred in unambiguous language by statute, the courts cannot interfere with its exercise and substitute their own discretion for that of persons or bodies selected by the Legislature for the purpose.

Lower down:

In such a case what is a condition precedent for the doing of the act? It is not the actual existence of the particular purpose, but the opinion of the specified authority that the purpose exists. In other words, the authority is also made the sole judge of the existence of the purpose, for, otherwise it cannot form its opinion as to the necessity or expediency of doing the act for that purpose.

16. At page 709, Das, J. quotes from *Point of Ayer Collieries Ltd. v. Lloyd George* (1943) 2 All. E.R. 546: 1½

All these matters are placed by Parliament in the hands of the Minister in the belief that the Minister will exercise his powers properly and in the knowledge that, if he does not do so, he is liable to the criticism of Parliament. One thing is certain, and that is that those matters are not within the competence of this court. It is the competent authority that is selected by Parliament to come to the decision and if that decision is come to in good faith, this court has no power to interfere, provided, of course, that the action is one which is within the four corners of the authority delegated to the Minister.

17. Lower down (at page 711) quoting from another decision, Das J. observes:

It has been decided that, where a regulation of this kind commits to an executive authority, the decision of what is necessary or expedient and that authority makes the decision, it is not competent to the courts to investigate the grounds or the reasonableness of the decision in the absence of an allegation of bad faith. If it were not so, it would mean that the courts would be made responsible for carrying on the executive Government of this country on these important matters. Parliament, which authorises this regulation, commits to the executive the discretion to decide and with that discretion, if bona fide exercised, no court can interfere. All that the court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the legislature and to

see that those powers are exercised in good faith.

18. With regard to the contention that, because Ss. 10 and 12 have power to the Government to obtain information and enter and inspect the land,

the existence of the public purpose had to be made out by objective standards after such gathering of information Das, J. (at page 730)

observed:^{1/2}

In considering and construing the above sections it has to be borne in mind that a mere provision for an enquiry as a preliminary step to coming to a

decision will not necessarily make the decision quasi-judicial act, for the purpose of the enquiry may only be to enable the deciding authority to

make up its mind to do what may be a purely administrative act.

19. Mahajan, J. also approved of the following statement of the learned Chief Justice of Bombay in that particular case (page 650):

In other words, the duty cast must not only be to determine and decide a question, but there must also be a duty to determine or decide that fact

judicially.

20. But, on the actual construction of the Ordinance, his Lordship was of the view that the public purpose had to be determined by the authority

judicially.

21. The reasoning of Mukherjea, J. was similar, but it is instructive to note his observations (page 670):^{1/2}

In the performance of an executive act, the authority has certainly to apply his mind to the materials before him; but the opinion he forms is a purely

subject matter which depends entirely upon his state of mind. It is, of course, necessary that he must act in good faith, and if it is established that he

was not influenced by any extraneous consideration, there is nothing further to be said about it.

22. In *Radesh Yam Khare and Another Vs. The State of Madhya Pradesh and Others*, , the State Government in exercise of the powers conferred

on it by S. 53 A of the C.P. and Berar Municipalities Act, 1922, appointed one Jain as the executive officer of the Municipal Committee,

Dhamtari, for a period of 18 months, with certain powers as therein mentioned. That notification was challenged by a writ petition in the Madhya

Pradesh High Court. It was dismissed. A Letters Patent Appeal was also dismissed. In the further appeal to the Supreme Court, four of their

Lordships (S.R. Das, C.J. Bhagwati, S.K. Das, and Kapur, JJ.) dismissed the appeal. Subba Rao, J. dissented.

23. S. 53-A (1) of the said Act ran as follows:

If a committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act or any other enactment for the time

being in force and the State Government considers that a general improvement in the administration of the Municipality is likely to be secured by

the appointment of a servant of the Government as the executive officer of the Committee, the State Government may, by an order stating the

reasons therefore published in the Gazette appoint such servant as the executive officer of the committee, for such period not exceeding 18 months

as may be specified in such order.

24. The contention of the appellants was that before the Government could take action, it had to be satisfied that the municipality was not

competent to perform the duties imposed on it, that this was an objective criterion about the existence of which the State Government had to be

satisfied judicially, that in that particular case, no opportunity had been given to the Committee to show why action should not be taken under S.

53-A and that consequently the order was liable to be set aside by a writ. In repelling this contention, S.R. Das, C.J. posed the question, whether

the statute Has expressly or impliedly imposed upon the State Government a duty to act judicially, as required by the third condition in the

definition given by Atkin, L.J. Answering the question in the negative, his Lordship observed (page 1462):

The simple fact that the incompetence of the committee goes to the root of the jurisdiction of the State Government to exercise its power under S.

53-A does not require that that fact must be determined judicially.....(page 1463). I find nothing in S. 53-A which in terms imposes any duty on

the State Government to act judicially. No form of procedure is laid down or even referred to from which such a duty could be inferred. On the

contrary, one finds a significant omission of any provision like that embodied in Sub-S. (5) of S. 57 which requires that no order under that section

shall be passed until reasonable opportunity has been given to the committee to furnish an explanation. It is also material to note that, whereas an

order under S. 57 is of permanent character, the one to be made under S. 53-A

is to be of a limited duration, i.e., for such period not exceeding 18 months as may be specified in such order. Further, S. 53-A contemplates swift action and a judicial hearing may easily frustrate the very purpose contemplated by S. 53-A, for a judicial act will be subject to the powers of superintendence of the superior courts and the operation of the order under S. 53-A may be postponed, as it has been done in this very case, by taking the matter from court to court until it is set at rest by this court.

25. At page 1464, his Lordship observed:

The requirement that the State Government must give reasons for the order it makes does not necessarily require it to record a judgment judicially arrived at. The Legislature might well have thought that public policy required that the State Government entrusted with large administrative powers should record its reasons for exercising the same so as to allay any misgivings that may arise in the mind of the public. In my judgment, the action taken by the State Government under S. 53-A is not a judicial or quasi-judicial act, but is an administrative act.

26. At page 1465 His Lordship observed:

To say that action to be taken under S. 53-A is an administrative action is not to say that the State Government has not to observe the ordinary rules of fair play.....The decision.....clearly establishes that in some cases it may be necessary to give an opportunity to a party to have his say before an administrative action is taken against him. But that is quite different from the well-ordered procedure involving notice and opportunity of hearing necessary to be followed before a quasi-judicial action open to correction by a superior court by means of a writ of certiorari, can be taken. The difference lies in the manner and mode of the two procedures. For the breach of the rules of fair play in taking administrative action a writ of certiorari will not lie.

27. Bhagwati, J. felt that it was unnecessary to decide whether the State Government was performing an administrative or quasi-judicial function in that case, because, actually an enquiry had been instituted by the State Government about the charges levelled against the appellants and full opportunity had been given to them to defend themselves.

28. S.K. Das, J. was not satisfied that the enquiry which preceded the notification was a proper enquiry, but, all the same, he observed that the

court could not interfere, because, the function exercised under S. 53-A was administrative in nature. His Lordships pointed out that the

Government had to consider only policy and expediency and at no stage had before it any form of lis.

29. The opinion of Kapur, J. was similar to that of S.R. Das, C.J. and S.R. Das, J.

30. Subba Rao, J. held that the criterion that the committee was not competent to perform the function was an objective one and an opportunity

had to be given to the Municipality before action could be taken, but no such opportunity was given in that case.

31. A.K. Kraipak and Others Vs. Union of India (UOI) and Others, was a remarkable case, where one Naquishbund, who was acting as Chief

Conservator of Forests, was himself a member of the selection board which had to select persons to posts including the Chief Conservator of

Forests. Further he had a bias against one Basu, who was a competitor. The decision turned finally on the particular facts of that case, but there is

a review of the case law and it is pointed out (at page 154):

The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining

whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons

on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the

manner in which that power is expected to be exercised.....What was considered as an administrative power some years back is now being

considered as a quasi-judicial power.

32. Then there is a quotation from the observations of Lord Parker, C.J. in Reg v. Criminal Inquiries Compensation Board, Ex parte Lain (1967) 2

Q.B. 864 at 881.

We have, as it seems to me, reached the position when the ambit of certiorari can be said to cover every case in which a body of persons or a

public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act

judicially.

33. Here again the criterion that a writ can issue only if the tribunal has a duty to act judicially is reiterated.

34. Now applying the tests laid down in these decisions to the particular case before us, emphasis must be laid on the fact that the Act and the

rules do not contain anything to suggest that in making the appointment of a trustee the Commissioner had to act judicially. We have already

pointed out that, whereas the Commissioner is required to give reasons for acting under S. 47 (2) (appointing a non-hereditary trustee besides a

hereditary trustee) or when acting under Sub-S. (5) (filling up a vacancy of a non-hereditary trustee appointed under Sub-S. 2), he is not required

to give any such reasons in making the appointment of a trustee under Sub-S. (1). In fact, even under Sub-S. (5), where a vacancy arises in the

post of a non-hereditary trustee appointed under Sub-S. (2), the Commissioner is required to give reasons why he considers it necessary to fill up

the vacancy but in making the actual selection of the trustee to fill up the vacancy from a number of persons he is not required to give any reasons.

It may be noted that in *Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others*, , S.R. Das C.J. observed (at page 1464)

that even the requirement under S. 53-A of the C.P. and Berar Municipalities Act, 1922, that the State Government must give reasons for its

order, did not mean that it was acting in a quasi-judicial capacity. The case is a fortiori here, where the Commissioner is not required to state any

reasons for filling up a vacancy under S. 47 (1).

35. Secondly, the Act vests in the Commissioner the power of constituting the Board of Trustees, and so long as he has stated in good faith, it will

follow from the principles laid down in the above decisions, that his act cannot be questioned by the court. To hold otherwise, would practically

have the effect of reducing the court as an appellate authority in matters of this kind and would only hold up the functions of the trustees. It is true

that under S. 114 of the Act, the Government can review the decision of the Commissioner, but that does not mean that the Commissioner himself

has to act in a quasi judicial capacity.

36. Thirdly, the selection is left to the subjective opinion of the Commissioner. In the process of selection of a trustee, no objective criteria for the

selection of a particular trustee have been laid down in the Act. It is true that S.

26 of the Act lists out the disqualifications for being a trustee, such as (a) if he does not profess the Hindu Religion.....(c) if he is an undischarged insolvent, (d) if he is of unsound mind, etc. But once there are a number of persons who are not disqualified, no objective criterion has been enacted for making the selection from among the persons not disqualified. The Commissioner can well be expected to select the proper person.

37. Fourthly, and this is perhaps only another way of stating the third point, the selection is a matter of discretion of the Commissioner, Usually, where a matter is one of discretion, the mental process is subjective and it is impracticable to expect reasons in support of it. This proposition has, however, to be stated in a slightly different form, where some matters are left to the discretion of the court; for example, to grant bail or to appoint a receiver. In these matters the court is no doubt expected to exercise the discretion judicially and the principles governing the exercise of the discretion are fairly well settled. But even so, there is a residuary area where the matter being one of discretion, opinion is bound to vary from one Judge to another. Again, even where the court finds it necessary to appoint a receiver and has to state reasons therefore, and to that extent the discretion has to be exercised judicially, the actual selection of a particular receiver is not a matter where the court need give reasons. For instance, there may be three or four advocates and the court may appoint one of them as receiver. That function is an administrative matter. The case of the appointment of a trustee by the Commissioner under Sec. 47 of the Act has no judicial element at all in it and is, from start to finish, an administrative matter.

38. Fifthly, nobody has a right to say that he should be appointed as a trustee, and, therefore, if he is not selected and another person is selected, it cannot be said that any legal right of his has been affected. He may have a right to say that a person who has been selected as a trustee is disqualified to be a trustee under one or more of the grounds listed out in Sec. 26, but, where none of the applicants, whose names are considered by the Commissioner, are disqualified under Sec. 26, no one of them can say that he alone should have been appointed in preference to the others, and it is in that limited sense, that we say that the Commissioner is not acting quasi judicially. Where the complaint is that the person selected is

disqualified under S. 26, that particular complaint may be agitated in a writ, and, if made out, a writ of certiorari may issue. But no such writ can

issue where none of the persons, whose claims are considered are disqualified under Sec. 26, and it is only a question of selection from among the

qualified persons.

39. In his work, *Judicial Review of Administrative Action*, 2nd Edn. de Smith has indicated some tests as identifying judicial function as

distinguished from administrative function, at pages 64 to 80 and in Chapters 6 and 7. At page 69 he describes two categories of acts or decisions;

those which confer, vary or extinguish rights or liabilities, and those which are founded on an authoritative declaration of pre-existing rights or

liabilities. The decisions in the second category are generally speaking typical of the decisions made by courts, where as decisions in the first

category are not. For this reason decisions in the first category will not so readily be characterized as judicial. In simple language, this test applied

to this case means this, that by selecting T.K. Ramaswami Gounder as a trustee the Commissioner was conferring certain rights on him as a trustee,

and it was not an act founded on an administrative declaration of any pre-existing right of T.K. Ramaswami Gounder.

40. Again pages 72 and 73 the learned author points out that a judicial act refers to the exercise of discretion in accordance with objective

standards as opposed to subjective considerations of policy and expediency. We have already pointed out that no such objective standard has

been or can be laid down in the case of appointment of trustees, and the selection is only subjective based on considerations of policy and

expediency.

41. Again at page 75 the learned author refers to a decision of the Privy Council in the following terms:

In the course of another opinion of the Board it has been observed that judicial power does not exist where the ultimate decision may be

determined not merely by the application of legal principles to ascertained facts, but by considerations of policy also.

42. Again at page 265, the learned author says:

The crucial question, however is, "In what circumstances and to what extent will the courts review the merits of the exercise of a statutory

discretion which is neither made subject to appeal nor limited by the express provisions of the Act? The courts have repeatedly affirmed their

incapacity to substitute their own discretion for that of an authority in which the discretion has been confided. And, in so far as they have asserted a

power of review, they have tended to express themselves in cautious language.

There are many matters, which the courts are indisposed to question. Though they are the ultimate Judges of what is lawful and what is unlawful to

borough councils, they often accept the decisions of the local authority simply because they are themselves ill equipped to weigh the merits of the

solution of a practical question as against another.

43. Again at pages 266 and 267 the learned author says that the principles of judicial discretion are not relevant, where the character and the

functions of the repository of the discretion are far removed from those of a court and where the discretion must be governed by general

considerations of national policy.

44. Again at page 324 the learned author says:

Certiorari will issue to quash an order made by an administrative body only if the functions of that body are characterized as being at least partly

judicial.

45. At page 133, the learned author says:

There is no general rule of English law that reasons must be given for administrative (or indeed judicial) decisions.

46. In Garner's Administrative Law (3rd Edn.) at pages 11 and 12 three characteristics of judicial function of the Government are mentioned to

distinguish it from an administrative function. The third criterion is that, "as a general rule, the deciding judge, having found the facts and applied the

appropriate principles of law thereto, has little discretion in coming to his decision; he may not be influenced by preconceived principles of policy,

but must apply prescribed rules of law so as to reach a decision.

47. Thiru Vedanthachari, the learned counsel for the first respondent, B.R. Venkatachalapathi, has, however, strenuously argued that the power of

the appointment of a trustee of a temple is itself judicial. He seeks to establish this in the following ways: (a) historically, the State has always

proceeded on the footing that it has got the power of controlling the

administration, in particular, of the properties of a temple, for the purpose of the temple, and it is in exercise of this power that a trustee is appointed; (b) the quality of the power is judicial in nature; and (c) the functions of a trustee are often judicial. He referred to Lectures X, XI and XII of the Tagore Law Lectures delivered in 1936 by Bijan Kumar Mukherjea (later Judge of the Supreme Court of India) and collected in the book of the Hindu Law of Religious and Charitable Trust (page 395 onwards of the first edition).

48. We shall quote a few passages:

I have told you already that from very early times the religious and charitable institutions in this country came under the protection of the ruling

authority.....The duty of protecting endowment is one of the primary duties of the king.....That such a jurisdiction existed in ancient times has been

asserted in more than one pronouncement of the Judicial Committee as well as of the other High Courts in India. In *Raju Muttu Ramalinga v.*

Periyanayaga I.A. 209 at 233, it was observed by the Privy Council that there could be little doubt that this superintending authority over temples

and religious endowments was exercised by the old rulers. Sir Montague Smith in course of his judgment in this case relied upon the opinion

expressed by Nelson in his *Madura Manual* that "the Dharmakartas of the Pagodas had but little communication with one another and regarded no

earthly superior except the king himself. Each was independent of all control and acted altogether as he pleased. This freedom naturally led to

gross abuses and the King was compelled to interfere in the management of some of the churches. Much in the same strain are the observations of

West, J. in *Manobax Ganesh v. Lahshmiaram* 12 Bom. 247, 260, that "under the native system of Government though it was looked upon as a

heinous offence to appropriate to secular purposes the estate that had once been dedicated to pious uses, yet the State in its secular executive and

judicial capacity habitually intervened to prevent fraud and waste in dealing with religious endowments.

Again at page 397½

The powers obviously included those of superintendence and the proper appropriation of the endowments of both Hindus and Mahomedan

temples and religious establishments, the preservation of the structures of such

institutions and the management of their affairs through trustees or managers.....On the whole, the powers exercised by the Government were of the same type as were subsequently entrusted to the Board of Revenue by the Bengal and Madras Regulations of 1810 and 1817 respectively. These Regulations vested the general superintendence of all public endowments in the Board of Revenue and prescribed the duties to be performed by the Board to prevent misappropriation of funds. In fact, they defined the manner in which the sovereign rights of the British Government were to be exercised in relation to the temples and the endowments?

49. The Board was empowered to appoint local agents. The collector in each Zillah would be ex officio one of such agents. Under S. 11 the local agents were to report to the Board of Revenue all vacancies in the office of trustees, managers or superintendents. S. 13 required the Board to make the appointments.

50. The system continued till 1841 and 1842, when, in deference to strong objections taken by some persons in England to the exercise of control over Hindu and Mohammedan religious establishments by a Christian Government, the Board was advised to withdraw, as far as possible, from active management of the religious institutions. Accordingly the Religious Endowments Act (XX of 1863) was passed, with the result that the control exercised by the Board of Revenue under the earlier Regulations was given up in regard to the institutions where the right of nomination of trustees, manager or superintendent was not vested in or subject to confirmation of the Government. In other cases, where the Government or any public officer had the right of making or confirming the nomination, the control of a committee constituted under the Act was substituted under the Act and it took the place of the Board of Revenue. The properties controlled by the Board of Revenue were transferred to the trustee or manager, and in the event of a vacancy of the office of trustee any person interested in the temple could apply to the civil court to appoint a manager of such institution. Further Ss. 14 to 18 contained provisions enabling a person to apply to the court for permission to sue a trustee who had, inter alia, committed breach of trust of the funds of the temple. The learned author says (page 402):

The fact that a temple committee has been appointed does not oust the general

jurisdiction of the court to make any order that it considers it necessary for due administration of the trust.

51. In particular, the court has jurisdiction to frame a scheme under S. 92, C.P. Code.

52. In 1927, the Madras Hindu Religious Endowments Act (Act II of 1927) was passed by which a Hindu Religious Endowments Board was

constituted and it was given power of control over trustees and of framing schemes (S. 63). The Trustee or any person having interest may institute

a suit in the court to modify or set aside such order. Under S. 73, the Board or any person having interest, with the consent of the Board, may

institute a suit in the court, inter alia, for the following relief, viz., appointing or removing a trustee of a temple. To this extent S. 92 C.P. Code of

1908, was to have no application.

53. Madras Act II of 1927 was replaced by Act 19 of 1951, and that by Act 22 of 1959, which is the Act now in force.

54. Besides the above materials, the learned counsel has referred to some decisions showing how control was exercised by the court. Prayag

Dossji Varu Mahant v. Thirumala Srirangacharlu Varu 28 Mad. 319, Prayagdasji Varu Mahant v. Thirumala Srirangacharlu Varu 30 Mad. 138

(P.C.), Seshadri Iyengar v. Nataraja Aiyar 21 Mad. 179, Raja Varma Valia v. Ravi Vurmah Kunhikutti 1 Mad. 235, and Veeraraghava

Thathachariar v. Srinivasa Thathachariar 23 M.L.J. 134.

55. It seems to us, however, that, though the power of the State to ensure that the trustees applied the income of the temple for the purposes of the

temple and to appoint fresh trustees cannot be doubted, the actual selection of a particular trustee is only an administrative power and does not

contain any judicial element in it. Thus the power exercised under Art. 22 of 1959 by the Deputy Commissioner or the Commissioner holding that

a trustee has been guilty of breach of trust and therefore removing him and directing that a fresh trustee be appointed and the similar power of the

court in a suit which follows the orders of the Deputy Commissioner or the Commissioner can be recognised as judicial in nature. But, once it is

decided that a fresh trustee has to be appointed, the opinion of the State as to who should be selected as trustee from among a number of

applicants is not necessarily judicial. Where it is alleged that a trustee has been

guilty of breach of trust, obviously an enquiry has to be made and an opportunity must be given to the trustee to meet the charges made against him, and a determination as a result of such enquiry will necessarily be judicial in nature. But the judicial enquiry of the determination stops there and cannot be taken as entering into the next stage of the appointment of a particular person from among several applicants, in the place of the trustee who has thus been ordered to be removed.

56. We are unable to accept the contention that the nature of the office of the trustee itself is something which has a judicial element in it. The

learned counsel has referred to S. 28 of Act 22 of 1959 that the trustee is bound to administer the affairs of the religious institution and apply its

properties in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in

respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties, if they were his own. We do not

find anything in this provision to require us to hold that the appointment of a trustee is itself judicial in nature. At this stage, it is relevant to note that

there is a decision of the Privy Council that the appointment of a trustee made by the District Judge under S.10 of Act 20 of 1863 was in his

discretion and not as a matter of ordinary civil jurisdiction. The decision is *Minakshi Naidu v. Subramania Sastri* 11 Mad. 26= 14 I.A. 160. Under

S. 10 it was the duty of the members of the committee to fill up the vacancy within three months by election, and, if it was not so done, the civil

court, on the application of any person whatever, may appoint a person to fill the vacancy or may order that the vacancy be forthwith filled up by

the remaining members of the committee with which order it shall then be the duty of such remaining members to comply and, if this order be not

complied with the civil court may appoint a member to fill the said vacancy. The vacancy was not filled up within 3 months. The duty therefore

devolved on the District Judge. He allowed the election to take place in order to ascertain the wishes of the public and to satisfy his own mind as to

who would be the proper person. He then appointed the person who got the highest number of votes. An appeal was filed to the High Court. The

High Court set aside the appointment on the ground that the person was a Vaishnavite, whereas the temple in question was a Saivite temple. On

further appeal to the Privy Council, their Lordships held that no appeal lay to the High Court. In that connection they made the following

observations:

In the opinion of their Lordships, the tenth section places the right of appointing a member of the committee in the civil court not as a matter of

ordinary civil jurisdiction, but because the officer who constitutes the civil court is sure to be one of weight and authority and with the best means of

knowing the movements of local opinion and feeling, and one can hardly imagine a case in which it would be more desirable that the discretion

should be exercised by a person acquainted with the district and with all the surroundings. The exercise of the discretion being so placed in the

district Judge, their Lordships are unable to find anything in the tenth section which confers a right of appeal.

57. This decision was followed by Sadasiva Aiyar and Napier, JJ in Subbier v. Abboy Naidu 29 M.L.J. 671, where it was held that no revision

under S. 115, C. P. Code lay against the appointment made by the District Judge under Sec. 10 of Act 20 of 1863.

Napier, J. observed¹

The Privy Council, dealing with the exercise of the powers under S. 10 calls it the right of appointing a member of the committee." This phrase

seems to me indicative of its nature. It is not a right to apply nor a duty of the court to appoint and it is not a matter of "ordinary civil jurisdiction".

These phrases used by the Privy Council seem to me to be inapt for judicial proceedings.

58. Thus, these decisions show that even the appointment of a trustee under S. 10 of Act 20 1863 by the court is not in its regular judicial functions

as a court. A fortiori the appointment made by the Commissioner under S. 47 of Act 22 of 1959 would not be judicial.

59. It is interesting to note that there has been a judicial pronouncement that even the appointment of a Judge of a High Court is purely an

administrative function. A fortiori the appointment of a trustee would be administrative. The pronouncement occurs in British Imperial Oil Co. Ltd.

v. Federal Commissioner of Taxation 38 C.L.R. 153 in the judgment of Isaacs J. (at page 178). The learned Judge, while pointing out the different

between the three wings of the Government, legislative, executive and judicial,

gives some instances of the administrative power as distinguished from the judicial wing of the State. He says:½

Partly repeating, for emphasis, some previous observations, I would say that some matters so clearly and distinctively appertain to one branch of

government as to be incapable of exercise by another. An appropriation of public money, a trial for murder and the appointment of a Federal

Judge are instances.

60. This view is referred to with approval in de Smith's Judicial Review of Administrative Action, 2nd Edn., at page 63:½

In an Australian case the appointment of judges was cited as an illustration of an essentially non-judicial power; but there are countries in which

such a power is exercisable only by a body composed wholly or mainly of Judges.

61. Reference is made in the foot note to the author's book to the New Common Wealth and its Constitutions. The passages in that book show

that in those cases there were statutes prescribing the vesting of the power of appointment in a body composed wholly or mainly of judges. In

other words, apart from the statutes, the power of appointment of a judge has itself been indicated by the learned author as an illustration of the

exercise of an administrative power. It is trite knowledge that a judge exercises mainly judicial powers, but the power of appointing a Judge is

vested in the executive and has been considered to be an administrative power. If so, there is no reason to hold that the power of appointment of a

trustee is judicial in nature. The powers of a trustee have obviously far less judicial content than the powers of a judge.

62. It may be noted that Mukherjea in his lectures quotes the following passage from Manohar Ganesh v. Lakshmiram 12 Bom. 247 260:

Under the native system of Government though it was looked upon as a heinous offence to appropriate to secular purposes the estate that had

once been dedicated to pious uses, yet the State in its secular executive and judicial capacity habitually intervened to prevent fraud and waste in

dealing with religious endowments.

63. In our opinion, the words "judicial capacity" occurring in this passage refer to the capacity of the State to remove a trustee in order to prevent

fraud and waste of the funds of the religious endowments, and they cannot be extended to the power of appointment of a trustee.

64. In (W.P. 878 of 1966) T.M. Maruda Pillai (petitioner) v. The Commissioner H.R. and C.E. Nungambakkam, Madras and others

(Respondents), Alagirisami J. dismissed the writ petition filed by one of the residents of Pandamangalam village who was not selected as a trustee,

by the Area Committee. The learned Judge observed:

It does not appear that the petitioner has any right, legally recognised, to have his claim considered for the trusteeship, and unless he has such a

right he has no right to be heard either. The case of applicants for service under the State stands on a different footing, because Arts. 14, 15 and

16 of the Constitution would apply to them. Trusteeship of the temple is not service under the State and nobody has a right to say that he ought to

be appointed a trustee. Nor can anybody therefore claim that he should be heard before his application is rejected.

65. According to this view the writ petition in this case will itself be not maintainable, but we are not prepared to go so far. Nor does the learned

Government Pleader go so far. We, however, agree with that portion of the learned Judge's observations, that an applicant for trusteeship has no

right to insist that he should be appointed. In this particular case, as we have already pointed out, the first respondent's name was also considered

by the Commissioner.

66. In W.P. 922 of 1967 (Kulala Grama Paripalana Sangam represented by its President S. Chinnayya Odayar v. State of Madras, represented

by Secretary to Revenue Department and others), Alagiriswami J. disagreed with the view of Kailasam, J. in the judgment which is under appeal.

He observed: 1½

Therefore, the observations of the learned Judge, that it is incumbent on the Commissioner in making the appointment to consider the comparative

merits of the applicants as trustees and make the appointment does not seem to be warranted by the sections of the Act or by the rules relating

thereto; nor can I agree with the learned Judge when he says that the order of the Area Committee or the Commissioner is in the nature of a quasi-

judicial function and it is incumbent on the Commissioner to give reasons for such an appointment. No person has got a right to claim that he should

be considered for appointment to the post of non-hereditary trustee of a temple and unless any person has any such right, it cannot be said that the

Commissioner is exercising a quasi-judicial function in appointing non-hereditary trustees to temples. Nor is it correct to say that it is incumbent on

the Commissioner to give reasons for such appointment. That will be so only if the person can claim that he has got a legal right to be appointed.

An order appointing non-hereditary trustee under S. 47 or 49 of the Act is not one deciding conflicting claims of right. There is no lis before the

Commissioner. It is not an appealable order and it is not incumbent on the Commissioner or the Area Committee to give any reason for the appointment.

67. In our opinion, these observations are substantially correct.

68. In W.P. 1057 and 1428 of 1969 (S. Natesa Odayar and another v. State of Madras, represented by Secretary to Government, Revenue

Dept, Madras and others) the Area Committee appointed five persons as trustees for two temples. Rangaraja Odayar, the writ petitioner in W.P.

1428 of 1969 was one of the unsuccessful aspirants. He filed a revision petition to the Commissioner. The Commissioner set aside the appointment

of two, namely, Pichai Odayar and Natesa Odayar, and confirmed the appointment of the other three persons. He did not, however, pass an order

appointing Rangaraja Odayar. Rangaraja Odayar filed a revision petition to the Government under S. 114 of the Act. The Government rejected

the petition stating that they did not see any reason to interfere with the order of the Commissioner. Natesa Odayar also preferred a revision to the

Government against the order of the Commissioner setting aside his appointment. That was also dismissed by the Government on the same ground.

Natesa Odayar filed W.P. 1957 of 1969 and Rangaraja Odayar filed W.P. 1428 of 1969. A preliminary objection was taken on behalf of the

Government that the writ petitions were not maintainable. That contention was repelled. The next question was about the nature of the duty of the

Area Committee in appointing a trustee, whether it was acting as a quasi-judicial authority or merely as an executive body. The learned Judge

(Palaniswamy J.) held that it was acting as a quasi-judicial body. In coming to this conclusion, he relied on the following criteria: Firstly, the Area

Committee has to take evidence where it is urged before it that some of the applicants are disqualified under Sec. 26 of the Act. In giving a

decision it is bound to act judicially. Again under Sec. 51 it shall have due regard

to the claims of persons belonging to the religious denominations for whose benefit the institution concerned is chiefly intended or or maintained. This in the opinion of the learned Judge was again an objective consideration. Further the order of the Area Committee is liable to be interfered with in revision under Sec. 21 of the Act and by the Government under Sec. 114 of the Act. This hierarchy also was relied upon by the learned Judge to show that the function of the Area Committee in appointing trustees was quasi judicial. In our opinion, however, the reasons given by the learned Judge are not valid for arriving at the conclusion that in appointing a trustee the Area Committee was acting quasi-judicially. We agree that in deciding whether an applicant is disqualified under Sec. 26, it has to act quasi-judicially, and to that extent that part of the decision may be open to interference by a writ of certiorari. But it does not follow from this, that in making the selection from the persons who are not disqualified, the Area Committee is acting judicially. The learned Judge, in support of his conclusion, quotes the following passage from Halsbury's Laws of England, Volume II, 3rd Edn. at page 561½

Moreover, an "administrative body, whose decision is actuated in whole or in part by questions of policy, may be under a duty to act judicially in the course of arriving at that decision. Thus, if in order to arrive at the decision the body concerned had to consider proposals and objections and consider evidence, if at some stage of the proceedings leading up to the decision there was something in the nature of a lis before it, then in the course of such consideration and at that stage the body would be under a duty to act judicially.

69. It may be noted that this passage itself supports what we have stated that only at the stage of determining whether any of the applicants is disqualified under Sec. 26 there is a duty to act judicially, but such a duty does not exist in the further stage of selecting a trustee from out of several applicants.

70. Similarly the fact that the selection of the Area Committee is subject to the revisional power of the Commissioner under Sec. 21 or the revisional power of the Government under Sec. 114 of the Act could not make the initial power of appointment quasi-judicial. Similarly Sec. 51, of the Act could not also make the power of appointment quasi-judicial. The learned

Judge in criticising the decision of Alagiriswami, J. in W.P. 922

of 1967 dated 29th March, 1969 (already referred to), says inter alia, that the attention of Alagiriswami, J. does not appear to have been drawn to

the decision of the Supreme Court in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, where their Lordships observed:

The appellant was, therefore, a representative of the Committee which was in law the trustees of the amounts collected by it from the villagers for a

public purpose. We have therefore no hesitation to hold that the appellant had the right to maintain the application under Art. 226 of the

Constitution. This court held in the decision cited The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, , that

ordinarily, the petitioner who seeks to file an application under Art. 226 of the Constitution should be one who has a personal or individual right in

the subject matter of the petition. A personal right need not be in respect of a proprietary interest; it can also relate to an interest of a trustee.

71. In that particular case, however, the appellant was himself a representative of the committee which was in law the trustees of the amounts

collected and that was why it was stated that there was sufficient legal interest to file a writ petition. This passage does not in terms apply to a

person who is seeking to be appointed a trustee. Moreover, it would only show that B.R. Venkatachalapathi could file a writ petition, but it does

not follow that the Commissioner, in making the selection, is acting quasi-judicially. For the reasons mentioned above, we hold that the order dated

21st November, 1968 of the Commissioner is not liable to be set aside in writ proceedings. The order of Kailasam, J. quashing that order is

hereby set aside. The writ appeal is allowed. The parties will, however, bear their own costs.