

(1980) 06 MAD CK 0019
In the Madras High Court

The Executive Officer, Sree Arthanareeswarar Devasthanam	APPELLANT
Vs	
S.N. Balasubramania Gurukkal (died) and Others	RESPONDENT

Date of Decision : 18-06-1980

Acts Referred:

Citation : (1981) 94 LW 26 : (1980) 2 MLJ 424

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—The defendant, The Executive Officer, Sri Arthanareeswarar and Kailasanathar Devasthanams, Tiruchengode, is the appellant before me. The second appeal arises out of O.S. No. 245 of 1971 in which the respondents/plaintiffs, who are the hereditary Archakas and Sthanikas of the temples above named and who are performing the pooja according to turns, filed a representative suit praying for rendition of accounts of the collections made by the defendant by the issue of tickets for various items in the temples mentioned in the plaint. There was also a prayer for payment of half share in the collections as well as half share in the Archanai and Deeparathanai collections from January, 1971.

2. The case of the plaintiffs is that the emoluments of the Archakas and Sthanikas consist of the fee paid by the worshippers for performing (1) Archanais, (2) Deeparathanais, (3) Kattalai and (4) other gifts given at the time of worship. They are not separately paid any remuneration from the temple funds and so the Executive Officer in his proceedings Roc. No. 90/61-8, dated 13th November, 1951, fixed the fees for Archanais, Deeparathanais and Kattalais and determined the share of the Archakas and Sthanikas in those collections. This necessitated the plaintiffs to file O.S. No. 33 of 1956 before the Sub-Court, Salem in a representative capacity and the same was decreed on 30th November, 1957. Though there was a prayer for injunction, that prayer was not granted by the Court. The amount due till 14th November, 1957, was ascertained and paid to the plaintiffs and others. The fees for five items; of service was fixed in those

proceedings and the shares of the Archakas were also mentioned. The then Executive Officer put up a memo on the notice board on 20th September, 1952, stating that the shares of Archakas in the Archanai and Deeparathanai tickets will be paid on Mondays and Fridays and the day following each New Moon Day. The said system was in vogue only for a few years, but thereafter it was abandoned. From 1967 onwards, various kinds of tickets have been issued by the Executive Officer, for instance, tickets for Kanikkai, tickets for Palavagai receipts, tickets for marriage in the temples and tickets for Abishekam, Santhihomam and Navagraha Santhi Kanikkai, etc., and in accordance with those tickets the plaintiffs and other Archakas were performing services to the worshippers. The introduction of the ticket system was never informed to the plaintiffs and, therefore, they had no knowledge, whatever about the resolution passed by the Board of Trustees. u/s 57 of the Hindu Religious and Charitable Endowments Act, 1959, for introducing ticket system, they should be given an opportunity and their representations should have been heard. But that was not done. In the fee fixed at Rs. 5-50 for Abishekam, the Archakas' share was determined at Rs. 4-50 in the proceedings dated 13th November, 1951, mentioned above. But now tickets are issued for Abishekam at Rs. 2 and the plaintiffs are obliged to lose their shares. There cannot be any reduction without the knowledge and consent of the plaintiffs. They stand to be affected by the same. However, the defendant is continuing in spite of that being objected to. The defendant has not paid the shares of the plaintiffs for Archanaish and Deeparathanai tickets from January, 1971 in spite of repeated requests. The amount due to the plaintiffs is estimated at Rs. 5,100 being their shares in the Archanai and Deeparathanai tickets. On 15th March, 1971, by a notice, Exhibit A-4, a demand was made on the defendant. But that had not been complied with. In fact, not even a reply was sent and hence the necessity for the suit.

3. The defendant in his written statement contended that no doubt the plaintiffs are en-titled to receive their shares from the Archanai and Deeparathanai tickets for the services rendered by them as well as paditharam for performing poojas from the temple authorities. It is also true that poojas are done by the plaintiffs as per turns or "morais" and the fees had been collected for six items of worship and for Abishekam, the rate was fixed at Rs. 5-60 and 4-50 was paid to all the Ulthurai servants while the balance of Re. 1 was retained by the Devasthanam as Kanikkai. There are 20 different Ulthurai services and the sum of Rs. 4-50 was distributed as per Dittam. The Ulthurai servants received their respective shares from the Archakas and the Archakas used to issue receipts containing the signatures of the Ulthurai servants. Gurukkals and Stha-nikas had also signed in token of their having received their due shares in the Abishekam amount. This was the practice in vogue upto 1962. But in the beginning of the year 1963, the Archakas and Sthanikas felt that it was infra dig for them to receive their shares after signing the vouchers therefore and they began collecting the amount from the worshippers directly and were paying only Re. 1 to the Devasthanam as Abisheka Kattanam. The rest of the amount was distributed among themselves,

Sthanikas and Ulthurai servants. Consequently the system of payment by vouchers was put an end to by the Archakas. The Devasthanam found that the Archakas and Sthanikas were receiving double the amount from the worshippers and were paying only Re. 1 to the Devasthanam. There-fore the Devasthanam insisted upon the payment of Rs. 2 for each Abishekam and this was complied with by the Archakas. As some of the Ulthurai services became defunct, the Archakas began to appropriate those sums also. Because of the indifferent attitude of the Archakas in not regularly performing some of the sevais, the worshippers themselves stopped performing the three items of worships mentioned as items 4 to 6 in the proceedings dated 13th November, 1951, made mention of in the plaint. As a result of this, the Devasthanam is losing its due share and the Archakas started performing those kinds of worship by private negotiations without the knowledge of the Devasthanam. The shares of the Archakas and Sthanikas as regards Abishekam and Deeparathanai were being regularly paid upto 13th March, 1971. In fact, the plaintiffs, have also signed those vouchers and received their shares. Sri Ardanareeswarar Devasthanam is the main temple having eight sub-temples and those sub-temples are being maintained from out of the income of the main temple. In order to augment more resources to these temples and also to regulate and to bring to account the income, from the various items, the Devasthanam authorities sent a memorandum on 1st October, 1962, stating that services should not be performed without issuing proper tickets. The plaintiffs also signed the memorandum in token of their accepting the order, dated 1st October, 1962. However, the Archakas were not implementing this order regularly which resulted in the introduction of the ticket system stipulating various fees for different lands of services. In spite of this, the Archakas collect Paditharam and other things from the worshippers directly. It is not correct to state that the Archakas are not paid for any of the services done in the sub-temples. The plaintiffs were fully aware of the introduction of the fees for the eight items and they had collected the fee for the respective kinds of worship and remitted the amount in the Devasthanam Treasury and they have acquiesced all these years, and therefore they are estopped from questioning the customary collections by the Devasthanam . On the representation of the Archakas and the Sthanikas in or about 1963, the Devasthanam left the distribution of the emoluments to the Ulthurai servants and the Abishekam fees to the Archakas themselves. The defendant was collecting only Rs. 2 for Abhishekam and by the said kind of arrangement, the Archakas were getting more than what they were getting after having remained quiet for a long number of years. The Devasthanam is well within its rights to introduce-the ticket system for entry and the same is made only on important festival days. The-plaintiffs are not affected in any manner by the introduction of the ticket system for Archanais and Deeparathanais. The plaintiffs are not entitled to the entire collections under these heads. The plaintiffs did not tender the counterfoils regarding the Archanais in the Kailasanathar temple and, therefore, their share could not be scrutinised and disbursed. The plaintiffs have in fact received a sum of Rs. 8,416-81 P. towards

their share for Archanais and Deeparathanais for the period 16th July, 1970 to 13th February, 1971. As per the accounts of the Devasthanam, the shares of the plaintiffs come to Rs. 2,563-29 P. upto 31st May, 1971 for both Ardhanareeswarar as well as Kailasanathar temples. The defendant was ready to pay their shares. The plaintiffs have rushed to the Court unnecessarily. Therefore, there is no cause of action and hence the suit is liable to be dismissed .

4. A reply statement was also filed by the-plaintiffs stating that the Archakas were not paid their shares regularly by the Executive Officers. It was not true that the Archakas were collecting fees for Abishekam from the worshippers. The worshippers were not paying anything to the Archakas after the introduction of the ticket system.

5. On trial, the learned Subordinate Judge held that the plaintiffs-Archakas were entitled to half share in the collections of Archanai and Deeparathanai tickets in Kailasanathar Devasthanam. Equally they were entitled to a share in the collections under the miscellaneous receipts besides their due share in Archanai and Deeparathanai amounts. Ultimately, the suit was decreed in respect of the half share in the collections of Archanai and Deeparathanai tickets and in other respects, the suit was dismissed. Not being satisfied with the same, an appeal was preferred by the plaintiffs in A.S. No. 320 of 1975 before the learned District Judge of Salem, while the appellant Devasthanam preferred a memorandum of cross-objections as against the award of costs. The learned appellate Judge came to the conclusion that excepting the Kanikkai, the plaintiffs would be entitled to a half share in respect of all the other items. With regard to the share in the amounts collected for Archanai and Deeparathanai, the Archakas will also have a share in these two items. Accordingly, he dismissed the appeal in respect of the full claim made by the appellants with regard to the collections made by way of Archanai and Deeparathanais at Sri Kaliasa-nathar Devasthanam, while it was held that the appellants would be entitled to half share in those collections and confirmed the findings of the trial Court in this regard. The appeal was allowed with regard to the other items of worship, excepting Kanikkai. A preliminary decree was passed in those terms. It is under these circumstances the defendant has come by way of second appeal to this Court, while a memorandum of cross-objection has been preferred by the plaintiffs in so far as the Courts below held that the plaintiffs would not be entitled to the entire ticket collections of Archanai and Deeparathanai, in Sri Kailasanathar temple. As regards this cross-objections, reliance is placed upon two judgments of this Court rendered in W.P. No. 1158 of 1970 and S.A. No. 140 of 1960 to which a detailed reference would be made in the judgment.

6. The argument in the second appeal and in the cross-objections is only on the question whether the Executive Officer has power to fix the fees for the purpose of various services without notice to the plaintiffs and if so fixed, whether it would be binding or operative on the plaintiffs. The learned Subordinate Judge in

paragraph 13 of his judgment states:

It is no doubt true that there is no convincing evidence about the hearing of the Archakas relating to the introduction of ticket system at the Kailasanathar temple. D.W. 1 is categorical that after getting the permission of the Assistant Commissioner for introducing the ticket system necessary publication calling for objections was put upon the, notice board, but there was no representation. Having regard to the existence of the ticket, at the hill temple and the absence of any evidence that the Archakas at the Kailasanathar temple were getting more than 4 annas and 2 annas for Archanai and Deeparathanai before the introduction of the ticket system, there is no reason to believe that any prejudice was caused by the introduction of ticket system to the Archakas.

On this aspect, the learned appellate Judge : points out in paragraph 9 of his judgment thus:

It is the contention of the appellants that they were not consulted before the introduction of the ticket system on 31st March, 1971, in Kailasanathar temple regarding the Archanais and Deeparathanais and it was also pointed out that no resolution was passed by the Trustees regarding the same. u/s 57 of the Hindu Religious and Charitable Endowments Act, the Trustees of religious institutions have power to fix the fees for the purpose of any service in the religious institutions and to determine the portion of such fees payable to Archakas or other office holders or servants of the institutions. It is to be seen that in this case the ticket system for Archanas and Deeparathanas was in vogue at the Hill temple even in 1951 as indicated by Exhibit B-19, Devasthanam Archana fees counterfoils. It is the contention of the appellants that the payments were not properly made by the Executive Officers as undertaken by them. The plaintiffs have sent a notice on 15th March, 1971, to the defendant and a copy of the same has been marked as Exhibit A-4. It is clear from para. 3 of the said notice that the Executive Officer had fixed the fees for Archanais and the Deeparathanais and had also determined the share payable to the Archakas. Further in the said notice the plaintiffs have only called upon the defendant to pay their share in the Archanais and Deeparathanais amounts from January, 1971 and they have not claimed the entire amount collected by the Devasthanam. The lower Court has decreed the suit allowing half share in the collections of Archanai and Deeparathanai tickets in the Kailasanathar Devasthanam since 31st January, 1971, and I do not find any reason to set aside the same as the plaintiffs have not come forward with any contention in Exhibit A-4 that they are entitled to the whole of the amount with regard to these two items.

The important point that has to be borne in mind in this case is whether any fixation without notice to the plaintiffs would be binding on them. It may also be remembered in this connection that the plaintiffs are not denying the right of the defendant-Executive Officer to fix the fees or introduce the ticket system. All that they would contend is that they should have been put on notice before such

fixation. It is admitted in this case that excepting to affix the copy of the resolution (Exhibit B-25) on the notice board, no specific notice was issued to the plaintiffs or the other Archakas nor were their representations called for. It is in this connection the judgment of Ramaprasada Rao, J., as he then was, becomes material. The learned Judge in W.P. No. 1158 of 1970 held that such resolution without notice to the Archakas would be violative of the principles of natural justice. A more apposite judgment is that of Ananthanarayanan, J., as he then was, rendered in S.A. Nos. 140 and 469 of 1960 relating to the very temples in this second appeal. When such orders were passed without notice to the Archakas, the learned Judge held "No doubt certain orders purport to have been passed, but they were made without notice to Archakas and without hearing them. For this reason, those orders were set aside by the authorities of the Department itself, and those relevant proceedings were filed in the suit. That matter is beyond controversy". Therefore, on the strength of these two judgments, it can safely be held that any introduction of ticket system, without notice to the plaintiffs and the other Archakas, will be invalid. I may once again state that it is not contended before me that any specific notice was ever given to the plaintiffs-Archakas excepting to affix a copy of Exhibit B-25 on the notice board. That in my view does not constitute proper notice. Nor again, the contention on behalf of the appellant that inasmuch as the plaintiffs had applied for a copy of the resolution, they should be deemed to have notice about the introduction of the ticket system, can be upheld. That does not cure the defect of want of individual notice. Therefore, clearly there is violation of the principles of natural justice in which event the Archakas will be entitled to whatever is due under the heads of Archanai and Deeparathanai. But Mr. P. R. Varadarajan, learned Counsel appearing for the plaintiffs fairly concedes that his clients are prepared to forego 25% of their income with regard to all the items for which ticket system had been introduced in Sri Kailasanathar temple, upto 31st March, 1979. On and from 1st April, 1979, the plaintiffs are prepared to accept 50% of their shares under the above heads which the Devasthanam has already conceded.

7. I am not able to accept the submission of Mr. S. Gopalratnam, learned Counsel for the appellant that the lower appellate Court has erred in interfering with the judgment of the trial Judge. In fact, valid reasons have been given by the learned District Judge as to why it should be held that the plaintiffs would be entitled to a larger share than what was decreed by the trial Court. I am in entire agreement with the same. In the result, the second appeal will stand dismissed. The memorandum of cross-objections is allowed. There will be no order as to costs in either.

8. The above second appeal and the Memorandum of cross-objection having been set down this day for being spoken to, the Court delivered the following Judgment:

9. This matter having been set down for being spoken to, it is ordered that there

will be a decree in favour of cross-objectors entitling them to claim a half of the collections through kanikkai.