
(2004) 08 KL CK 0059

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 34886 of 2003 and 22426 of 2004

Vijayan

APPELLANT

Vs

Cochin Devaswom Board

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Travancore-Cochin Hindu Religious Institutions Act, 1950 — Section 122, 123, 124, 62, 68

Citation : (2004) 3 KLT 670

Hon'ble Judges : K.S. Radhakrishnan, J;J.M. James, J

Bench : Division Bench

Advocate : M.P. Ashok Kumar, C.A. Chacko, C.M. Charisma and M. Soniya, for the Appellant; M. Ramesh Chander, K. Ramachandran, N.N. Sugunapalan, Ranjith Thampan and K.A. Sanjeetha, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Rights, authority, jurisdiction and powers of the Cochin Devaswom Board in the matter of administration and management of the incorporated and unincorporated Devaswoms under the Travancore Cochin Hindu Religious Institutions Act (Act XV of 1950), and also the scope of the bye-laws framed by the Board for the constitution of the Kshetra Kshema Samithies are the issues which have come up for consideration before us in these cases.

2. Writ Petitions and applications are being filed by various Kshetra, Kshema Samithies and devotees under Art. 226 of the Constitution of India questioning the authority of the Board in the matter of administration and control of various temples vis-a-vis the Kshetra Kshema Samithies constituted under the bye-laws framed by the Board. Disputes and differences often arise out of the interpretation and application of various provisions of the Act and the bye-laws, giving rise to litigations before this Court and the Civil Courts and it is highly necessary to set right those issues to maintain peace and harmony between the devotees and for the smooth and effective administration of the temples under the Board.

3. W.P.(C) 34886/03 is filed by the devotee under Art. 226 of the Constitution of India seeking a Writ of mandamus directing the Board to conduct re-election to the Kshetra Kshema Samithy of Thriprayar Sree Ramaswami Temple after giving membership to all the devotees, after holding that the constitution of Kshetra Kshema Samithy is illegal and irregular. Petitioner has also sought for a declaration that respondents 4 and 5 are not eligible to hold the post in the Kshetra Kshema Samithy since they are not believers in temple worship. WP(C) 22426/04 is filed by a devotee and former Secretary of the Kshetra Kshema Samithy of Vetaripaya Mahadeva Temple seeking a writ of mandamus under Art. 226 of the Constitution of India directing the Board to take necessary action to convene the Annual General Body Meeting of the Kshetra Kshema Samithy for the year 2003,04. I.A.2523 of 2003 in CDB.9 of 2002 was filed by some of the devotees of Sree Kurumba Bhagavathy Temple, Kodungalloor for a direction to the Board and Sree Kurumba Kshetra Kshema Samithy to conduct election of office bearers and executive committee of the Kshetra Kshema Samithy after issuing notice to all the members and affording an opportunity to attend the general body meeting and also for other consequential reliefs. CDB. 9 of 2002 was registered on a complaint received from few devotees highlighting the deficiencies in the administration of the temple and its mismanagement; DBA 89/04 is an application filed by the Secretary of the Cochin Devaswom Board seeking permission of this Court to nominate the persons mentioned in the application as members of the Renovation Committee for attending the renovation works in the Sree Poornathrayeesa Temple, Tripunithura.

4. The Board has filed counter affidavit and statements in WP(C) No. 34886 of 2003, reply statement in DBA. 89 of 2004 and also statements in CDB. 9 of 2002. Reply affidavits have also been filed by the parties. On going through the Writ Petitions, applications, counter affidavits and reply affidavits we have no hesitation to state that persons who are having varied interests are trying to squeeze into the various Kshetra Samithies for their personal interest, putting public interest and the interest of the administration at bay, resulting unrest among-devotees, at times leading to clashes among devotees. Men and women of character, devotion, integrity and honesty are relegated to the background and undeserving persons are holding their grip in the management of the various Kshetra Kshema Samithies functioning in temples. Many of the devotees belonging to the former category are reluctant to come forward and take part in the affairs of the temple and persons who want to take capital out of that are at times in the forefront. Rather than extending a helping hand to the Board in the administration of the temples often attempts are being made to divide devotees for personal gain and issues are projected out of proportion to demoralise the administration. Complaints are also on the rise with regard to irregularities in granting membership and enrolment of persons on political considerations.

5. A devotee had approached this Court and filed DB A.71/02 seeking a declaration that President and Committee Member elected to the Thriprayar Sree Ramaswamy Kshetra Samithy are not believers in God and temple worship and

therefore wanted a direction from this Court to remove them from the membership of the Committee. The Board in that case had appointed an advocate enquiry officer to conduct and enquiry as to whether the election was conducted contrary to clause 7 of the bye- laws. The Enquiry Officer noticed that Devaswom Officer had acted contrary to the provisions of the bye-laws in the matter of giving membership to Kshetra Kshema Samithy. Report was placed before this Court in DBA.71/02 and this Court quashed the election of the office bearers of the Kshetra Kshema Samithy. Direction was given to conduct fresh election by its order dated 17th January 2003. Election was later conducted on 2.6.2003 which is under challenge in WP(C) No. 34886/03 under Art. 226 of the Constitution of India with a prayer for conducting a re-election after giving membership to all the devotees and for a declaration that some of the persons elected are not believers in God or temple worship. Complaining that the annual general body meeting has not been convened as per cl.6 of the bye-laws the former Secretary of the Kshetra Kshema Samithy of Velappaya Mahadeva Temple has also approached this Court and filed WP(C) 22426/04 for a writ of mandamus to the Cochin Devaswom board to convene annual general body meeting of the Samithy for the year 2003-04. Complaints have also been raised in that Writ Petition stating that the Cochin Devaswom Board is colluding with the Samithy and is deliberately delaying , the convening of the general body meeting. Complaint has also been raised stating that the treasurer of the Kshetra Kshema Samithy had failed to prepare and present the financial accounts, balance sheet, profit and loss account etc. before the working committee.

6. We may point out earlier OP.No.33180 of 2QQ0 was preferred by a devotee, challenging the order passed by Cochin Devaswom Board by which the Oottupura of Sree Poornathrayeesha Temple was rented out to the Poornathrayeesha Seva Sangham which is functioning in that temple. The Sangham used to take initiative in the conduct of the annual Utsavam and other functions in the temple for several years. The Sangham had made a proposal to the Board to renovate the existing Oottupura attached to the temple and to provide all necessary amenities and to convert it into a modern marriage hall. The Sangham had also made a request to allow them to let out the hall on rent to be used for marriage purposes. The Finance and Accounts Officer of the Board had recommended the proposal and suggested Rs. 30,000/- as annual amount to the Devaswom from the Seva Sangham. The Board found that the proposal favourable and issued an order fixing the amount of Rs. 40,000/- as annual rent subject to the approval of the Court. Seva Sangham took up the stand that it is a Society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act and it is functioning for the welfare of temple and its devotees. Poornathrayeesha Bhakta Jana Samithy is another Samithy functioning in that temple. Complaint of the petitioner was that the Board has no power to lease out the Oottupura to the Seva Sangham. This Court found it was not proper for the Devaswom Board to rent out the Oottupura of the temple to the Seva Sangham. This Court also felt that the Sangham is expected only to help or advise the

temple authorities and it cannot collect contributions for the conduct of Poojas and other ceremonies in the temple. This Court though did not interfere with the functioning of the Sangham; directed the Cochin Devaswom Board to constitute an Advisory Committee in the various temples under the Board in accordance with the bye-laws. Original Petition was disposed of accordingly. Seva Sangham later filed RP130/01 in O.P.33180/2000. The Board also produced a draft bye-laws which was approved by this Court vide its order dated 29.6.2001.

7. The Devaswom Board on getting approval of the bye-laws issued a circular dissolving all the Kshema Samithies functioning in the various temples with effect from 1.8.2001. Consequently new Kshema Samithy was constituted in Sree Poornathrayeesha Temple as well, the period of which is to expire on 22.9.2004. President and other office bearers of the samithy were elected in the general body meeting held on 22.9.2002. Functioning of that Kshetra Kshema Samithy was found unsatisfactory. Cochin Devaswom Board has also received a complaint from one of the devotees along with the audit report of the Chartered Accountant dated 20.1.2004. The audit report was prepared by the Chartered Accountant after perusing the balance sheet, receipts and payments account and the income and expenditure account for the period 31st March 2003. The report shows that the Samithy has not maintained any cash book and the bank accounts are not properly maintained by the Samithy. Further it is also stated that for expenses incurred, instances are many, only self-vouchers are maintained. So also in certain cases these self-vouchers were not signed by the receiving parties. The Board felt the Kshetra Kshema Samithy was not competent enough to conduct festival in a befitting manner, therefore, had decided to constitute a committee for the conduct of Uthram Tirunal Maholsavam. I.A.2I01/04 was filed in OP 19127/02 by the Kshetra Seva Samithy for a direction to the Board not to grant permission to ad-hoc committee to conduct any festival in the temple including Uthram Thirunal Maholsavam other than through the Kshetra Kshema Samithy. Application was rejected by this Court and permitted the Devaswom Board to constitute a separate committee for the conduct of Uthram Thirunal Maholsavam.

8. The Board on the basis of Ashtamangalya Prasnam Conducted in the temple has also decided to renovate the temple structures including Sreekovil of Sree Poornathrayeesha Temple. The Board therefore found it necessary to constitute a special committee consisting of eminent, ardent and influential persons with sincerity and dedication for carrying out the said work which will take few years to complete: Board was satisfied that the present Kshetra Kshema Samithy would not be in a position to undertake the said work, especially when the Samithy itself owes large amount to the Board. Further, Board also noticed that the term of the Samithy is to expire on 22.9.2004. -The Board therefore constituted a separate committee consisting of 21 persons. The Committee is to function under the management and control of the Board and to undertake the work of renovation. .Persons named, according to the Board, are men of character and integrity and capable of raising funds to assist the Board for carrying out the renovation work of Sreekovil and other related works. On the

request of the Board they agreed to be the members of the committee and not on their volition, the Board then filed DB A 89/04 seeking approval of this Court for the constitution of the renovation committee." This court noticing that the members of the committee constituted are from various walks of life and also respectable persons of the locality capable of undertaking the work with devotion and dedication, granted the permission sought for. While granting permission this Court has also ordered that the question of appointing a retired judicial officer to supervise the work of the renovation committee would be considered later.

9. The Kshetra Kshema Samithy in the meanwhile got themselves impleaded in the proceedings and sought a direction from this Court to entrust the work to the Kshetra Kshema Samithy and not to the Renovation Committee. Sree Poornathrayeesha Baktha Jaha Samithy also got themselves impleaded and staked their claim for inclusion in the renovation committee. Contention was also raised that since full Board is not in office the President himself cannot constitute the Renovation Committee and that the work be entrusted to the Kshetra Kshema Samithy. Contention was also raised that the members of the renovation committee are members of the Seva. Sangham which is not a recognised Samithy under the bye-laws. Contention was also raised that the Board has no legal right to constitute another Samithy for carrying out any work in the temples. Reference was made to the bye-laws stating that each temple can have only one Kshetra Kshema Samithy.

10. The controversy which arises in all these cases centres around the powers of the Board under Act XV of 1950 and bye-law approved by this Court in RP130/2001 in OP. 33180/2000. We have already pointed out disputes are on the rise in various temples under the Cochin Devaswom Board in the matter of conducting election, in the matter of constituting committees and in the matter in giving membership to devotees to various Kshetra Kshema Samithies. Writ Petitions are being filed before this Court under Art. 226 of the Constitution of India complaining violation of the provisions of the bye-laws. Contention was also raised (that since the bye-law was approved by this Court it is binding on all and cannot be changed. Under such circumstance it is highly necessary to examine the powers conferred on the Board under Act XV of 1950 and the scope of the bye-laws, so that much of the litigations and controversies, could be set at rest. The Board in its wisdom has also decided, to amend the bye-laws to do away with the process of election conducted in the various Kshetra Kshema Samithies so as to give a quietus to disputes regarding granting of membership". convening of annual general body meeting, and in the matter of conducting, election etc. The Board has passed a resolution No. 19 dated 26.11.03 amending the bye-laws for doing away with the election of office bearers and to nominate them by taking lots, A. statement to that effect has been filed in WP(C) 34886/03. Much of the time of the Board and its officers is being spent in resolving disputes between devotees in giving membership, convening annual general meetings, conducting elections etc. in, the various temples under the Board. Varied interests political, religious and social are, emerging in the various Samithies and the Board finds it

difficult to resolve all those disputes. Since the power of the Board under the Act and the bye-laws, are questioned we may examine the same at some length. ,

11. Powers of the Cochin Devaswom Board under the Travancore Cochin Hindu Religious Institutions Act, 15/1950. The Act was enacted to make provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowment and Funds. Part I of the Act extends to Travancore and Part II of the Act extends to Cochin. We are in this case concerned, with Part II of the Act which deals with the Cochin Devaswom Board. Cochin Devaswom, Board has been constituted under S.63 of the Act. Composition of the Board has also been mentioned in the said section. The procedure for election of members of the Board has been stated in S.64 of the Act and their qualification has been mentioned in S.65 and disqualification for membership has also been enumerated in S.66 of the Act. S.68 of the Act obliges the Board to carry on the administration as a trustee. Board is bound to administer the affairs of incorporated and unincorporated Devaswoms and institutions under its management in accordance with the objects of the trust, the established usage and customs of the institutions and to apply their funds and property for such purposes. By virtue of S.62(I) of the Act the administration of incorporated and unincorporated Devaswoms and Hindu Religious Institutions which were under the management of the Ruler of Cochin immediately prior to the first day of July 1949 either under S. 50G of the Government of Cochin Act, XX of 1113 or under the provisions of the Cochin Hindu Religious Institutions Act, I of 1081 and all their properties and funds and of the estates and all institutions under the management of the Devaswom Department of Cochin have vested in the Cochin Devaswom Board. S.62(2) states that notwithstanding the provisions contained in sub-s.(I) the regulation and control of all rituals and ceremonies in the temple of Sree Poornathrayeesa at Tripunithura and in the Pazhayannur Bhagavathy Temple at Pazhayannur shall continue to be exercised as hitherto by the Ruler of Cochin.

12. S.74 of the Act states that all rights, authority and jurisdiction belonging to or exercised by the Ruler of Cochin prior to the 1st day of July 1949 in respect of incorporated and unincorporated Devaswoms have vested in the Board and the Board is obliged to exercise the same in accordance with the provisions of the Act. S.75 stipulates that the Board shall subject to the provisions of Part II of the Act, exercise supervision and control over the acts and proceedings of all officers and servants of the Board and of the Devaswom Department. S.72 stipulates that the Board shall be a body corporate having perpetual succession and a common seal with power to hold and acquire properties for and on behalf of the Devaswoms, institutions and estates specified in sub-s.(I) of S.62 and the Board shall by its name sue and be sued. The above mentioned provisions should positively show that the Board has got complete power in the matter of administration of incorporated and unincorporated. devaswoms and that they are bound to administer such devaswoms and institutions under its management in accordance with the objects of the trust, the established usage and customs of

the institutions and to apply their funds and property for such purposes. The Board has therefore complete power over all institutions and temples under the incorporated and unincorporated devaswoms. The board has also got power to frame schemes for the institutions which has been shown, in Chapter IX of the Act. In our view the Board in exercise of its power of administration and management can constitute committees for the proper and efficient administration of various temples and institutions. Contention was raised since bye-laws stipulates that there shall be only one Kshetra Kshema Samithy in a temple and Board cannot legally constitute any more committees and the entire activities which the Board proposes to implement has to be implemented only through the Kshetra Kshema Samithy, in our view, cannot be sustained.

13. Petitioner in WP(C) No. 34886/03 also contended since the bye-law was approved by this Court the Board is disabled from constituting any more committees unless permission is obtained from this Court. In the wake of these contentions as we have already indicated we may examine the scope of the bye-laws framed by the Board which was approved. In our view the Board is not legally obliged to frame any bye-laws under the T.C. Act for the administration of the temples or the constitution of Kshetra Kshema Samithies in various temples. Legislature has conferred powers on the Board to administer and supervise devaswoms and there is no stipulation that the Board should constitute Samithies by framing bye-laws. The Kshetra Kshema Samithies are the creation of the Board to enable the Board to effectively supervise and administer various temples. They are by and large advisory in nature. They are expected only to advise the Board for proper functioning of the various temples. Kshetra Kshema Samithies are not statutory bodies and cannot interfere with the administration of the temples. The Board can do away with those committees if it so pleases since they are created by the Board. Section 122 of the Act confers power on the Board to make rules to carry out all or any of the purposes of the Act. S.123 of the Act deals with publication of bye-laws which shall be published in the Gazette. Board has not taken any steps to publish the bye-laws in the Gazette. Therefore the bye-laws prepared by the Board which was approved by this Court have no statutory force. Therefore the Kshetra Kshema Samithies constituted in the various temples as per the bye-laws are not statutory bodies and have no legal right to dictate that the Board shall not constitute any more committees in any of the temples apart from the committees constituted under the bye-laws. We are of the view since bye-laws have no statutory force the Board is always free to annul it, amend it, vary it and delete any provision therein for which, no permission of the Court is required.

14. The Board has now decided, in exercise of the powers conferred on them under the act to constitute a Renovation Committee in Sree Poornathrayeesha Temple which in our view is within their jurisdiction. Board has constituted a Renovation Committee to which we have granted approval. Board in their application has asserted that the members of the Renovation Committee are men of eminence in various walks of life and are of good character and conduct.

Petitioners in OP 34886/03 and others could not point out any disqualification for any of the members nominated by the Board for inclusion in the Renovation Committee. Only complaint is that they are members of the Seva Sangham. Counsel for the Board submitted that the Board cannot forget the yeomen services rendered by them to the temple in the past. Counsel submitted the contributions they have made to the temple cannot be valued in money. Those persons are included in the committee not on their request but at the violation of the Board. The Board felt their services are necessary and essential for carrying out the renovation work of the temple. They are functioning as committee members not for any profit or any monetary benefit but as honorary members due to devotion to the temple. We therefore hold that the Board has the legal right under the Act to constitute committees of their choice for proper administration and supervision of the temple and the Kshetra Kshema Samithy has no legal right to interfere with the power of the Board in the constitution of the committees. We therefore do not find any illegality in the constitution of the Renovation Committee.

15. We may hasten to add that the Cochin Devaswom Board statutorily consists of three members, the term of two members has already expired. DBA. 174/03 was preferred by the Secretary of the Board before this Court to nominate the other two members and this Court gave a positive direction to the Government to nominate members vide its order dated 17.3.2004 within a period of one month from the date of receipt of copy of the order. So far no nomination has been,"made by the State Government. Administration and supervision of the temples cannot come to a standstill due to the delay in Government nominating members to the Board. Petitioners contended that the President of the Board has no legal right to constitute any committee in the absence of other two members. Reference was made to the decision of a Full Bench of this Court in *Murari v. Vasudevan* 1999 (3) KLT 253. We cannot find fault with the President for the delay in the nomination of the members in the Board. Renovation work needs attention and we find no infirmity in the President constituting the Renovation Committee.

16. The Power of the High Court under Act XV of 1950. S.68 of the Act states that the Board shall be bound to administer the affairs of incorporated and unincorporated Devaswoms and institutions under its management in accordance with the objects of the trust, the established usage and customs of the institutions and to apply their funds and property for such purposes. S.69 of the Act says that a member of the Board may be removed from his office by the High Court on the ground of proved misbehaviour or incapacity on an application made to the High Court by the Advocate General or a person belonging to the Hindu Community. S.102 of the Act states that the accounts of the Board shall be audited annually. The Board shall keep regular accounts of all receipts and disbursements. Audit shall be made by auditors appointed by the High Court in the case of the accounts of the Board. After completing the audit for any year or for any shorter period or for any transaction or series of transactions, as the case

may be, the auditor shall send a report to the High Court in the case of the accounts of the Board.. S.104 stipulates that the auditor shall specify in his report all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the Board onto incorporated or unincorporated Devaswoms or institutions under the management of the Board, as the case may be, or of loss or waste of money or other property thereof caused by neglect or misconduct. S.105 of the Act deals with rectification of irregularities. The High Court may send to the Board a copy of every audit report relating to the accounts of incorporated and unincorporated Devaswoms and those of the Board and it shall be the duty of the Board to remedy any defects or irregularities pointed out by the auditor and report the same to the High Court. If on a consideration of the report of the auditor or otherwise the High Court thinks that the Board or any member thereof was guilty of misappropriation or wilful waste of the funds or of gross neglect resulting in a loss to the incorporated or unincorporated Devaswoms or institutions under the management of the Board, the High Court may, after giving notice to the Board or the member, as the case may be, to show cause why an order of surcharge should not be passed against the Board or the member and after considering the explanation if any after taking such evidence as the High, Court deems necessary pass an order of surcharge against the Board or member as the case may be. The order of surcharge may be executed, against the member or members concerned of the Board as if it were a personal decree passed against, them by the High Court. S.124 of the Act provides for filing of suit against the Board: in the District Court. In other . words, there are sufficient safeguards in the Act if the Board Members act contrary to the interest of the incorporated and unincorporated Deyaswoms and the Institutions. The High Court can also apart from the powers mentioned earlier in appropriate cases interfere with under Art. 226 of the Constitution of India if the Board acts in excess of its authority or arbitrarily. In other words, there are sufficient safeguards under law if the Board acts against the interest of the administration of the Devaswoms.

17. We may also indicate even going by the bye-laws approved by this Court the Board has got complete freedom to constitute committees. Bye-law 4(c) states that the Kshetra Kshema Samithy is bound to recognize and acknowledge the powers of, supremacy and control of the Board. Bye law 23 stipulates that Kshetra Kshema Samithy is bound to follow all orders and directions issued by the Board. Bye-law 27 stipulates that the Board has got exclusive jurisdiction to change provisions, of the bye- laws. Even going by the bye-laws Board has got the complete powers and jurisdiction to amend it, vary it, delete it and even to do away with the bye-laws since those bye- laws are non-statutory. Board has now passed a resolution No. 19 dated 26.11.2003 to amend clause 7, a power in our view the Board could exercise even without consulting any of the Kshetra Kshema Samithies.. No permission of this Court is also necessary to amend clause 7 in view of clause 27. This Court has approved the bye-laws. The approved bye-laws itself says that the Board has got exclusive power to amend

the bye-laws. Therefore it is necessary to get approval from this Court even for amending the bye-laws. The Board has got complete freedom to amend clause 7 and allied clauses which they deem fit for the proper administration of the temples under the Board.

18. We are of the considered view that the Board is justified in seeking amendment of clause 7. Kshetra Kshema Samithies are not functioning properly at least in some of the temples. Varied interests, political, religious, social have crept into the various Samithies in the temples creating unrest among the devotees and at times clashes leading to a state of uncertainty. Board officials found it extremely difficult to settle the disputes between the devotees who are divided into several groups and often elections in the various Samithies have to be postponed on various occasions. Complaints are also raised stating that Board Officials have also got favoured groups. Writ Petitions are being filed before High, Court and before various forums complaining about non-issue of membership, irregular issue of membership by the Board Officials and also complaining irregularities in the conduct of election. Taking into consideration of all those aspects Board has taken a conscious decision to do away With election to the Kshetra Kshema Samithies, but to adopt a method of taking lots for constituting the managing Committee. . .

19. The Board has thought of amending the bye-laws, since similar directions were sought for by the Travancore Devaswom Board, which is also governed by the Travancore Cochin Hindu" Religious Institutions Act by which Cochin Devaswom Board is also governed. Disputes arose between the devotees and the members of the Kshetra Kshema Samithies functioning in various temples under the Travancore Devaswom Board also and the matter was brought up before this Court. Division Bench of this Court in series of cases, TDB. 5/97 and 41/97 passed an: order on 7.1.2002 granting permission to do away with election in the various Kshetra Kshema Samithies under the Travancore Devaswom Board.

20. We have already recognised the power of the Board to change the bye-laws or to adopt a method which is most conducive for the proper administration of the temples under the Cochin Devaswom Board. Taking of lots to constitute office bearers of the Samithies may not be a safe and sure method to safeguard interest of the temples. A totally unsuitable person may get elected by taking of lots, which would do harm to the Board as well as to the devotees. In appropriate cases Board itself may take a decision to nominate men of character and reputation as members of the Samithy after getting report from the Devaswom Officer who will have first hand information about the devotees of the temple and their character, conduct and devotion to the temple. The co-operation of right thinking persons is highly necessary for the proper administration of the temples. Without the active participation of devotees the Board would not be able to discharge its functions effectively. Devotees interest would be of prime consideration. But for their support the Board would not be able to function effectively. The Board also should effectively supervise their employees lest they

would also involve in unhealthy practices and would bring ill-reputation to the Board.

20. The Board should also take steps to persuade men and women of character and conduct to be members of the Samithies and not persons who go after it. Political or other considerations shall not influence the Board in nominating, members, but the interest of the temple alone. Contention was raised that if the Board is granted absolute power they may act arbitrarily which would not be in the best interest of the temples and the devotees. Board may issue proper guidelines for the selection of the office bearers of the Samithies so that men of character, conduct and devotion would alone be selected, Incidentally, we may point out there are also various Kshetra Kshema Samithies under the Board functioning efficiently, which the Board in its wisdom may retain. Samithies which are not functioning effectively the Board can always terminate their tenure at any time and nominate members who are men of character and conduct. We have no reason to think that members of the Board would act against the interest, of the temple or its affairs and if they do so, there are sufficient safeguards in the Act and the Courts as *parens patriae* in relation to idols could step in. The Act XV of 1950 has also conferred considerable powers on the Court to interfere if situation warrants.

21. In any view, these Writ Petitions cannot be entertained under Art. 226 of the Constitution of India. Petitioners have no case that any of their fundamental rights guaranteed under the Constitution, of India or statutory rights have been, violated. Further no writ of mandamus would lie to give effect to the provisions of the bye-laws which are nonstatutory. The Apex Court in *Guruvayur Devaswom Managing Committee v. Rajan* 2003 (3) KLT 618 held indisputably a devotee will have a cause of action to initiate an action before the High Court when his right under statutory law is violated. In the absence of violation of any of the fundamental rights or statutory rules we are of the view these Writ Petitions cannot be entertained and would stand dismissed. We have already declared the power of the Board under the Bye-laws and under Act XV of 1950 and the parties would be governed by the above declaration.

22. Writ petitions and applications are disposed of accordingly. The infirmities if any pointed out by a devotee in CDB 9/02 be considered by the Board and remedial measures be taken depending upon their merits.