
(2016) 11 KL CK 0068

In the High Court Of Kerala

Case No : W.P.(C) No. 4342 of 2014 and connected cases

Zamorin Raja

APPELLANT

Vs

Government of Kerala

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Madras Hindu Religious and Charitable Endowments Act, 1951 — Section 20, Section 21, Section 23, Section 48, Section 48, Section 6(9)

Citation : (2017) 1 ILRKerala 263 : (2016) 4 KLT 841

Hon'ble Judges : Mr. Thottathii B. Radhakrishnan and Mr. Devan Ramachandran, JJ.

Bench : Division Bench

Advocate : M.P. Sreekrishan, M.H. Bindu, M.G. Ashokan and V.N. Rameshan Nambisan, Advocates, for the Petitioner; K.R. Sunil, Mahesh V. Ramakrishnan, R. Ranjini and (B. Jayasurya), Sr. Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

Devan Ramachandran, J. - The bone of contention, in a manner of speaking, between the petitioners and respondents in these three Writ Petitions, is as to the validity of the circulars, one of which, dated 15.10.2010, was issued by the Deputy Commissioner (Administration), Malabar Devaswom Board, Kozhikode and the other, dated 20.09.2011, was issued by the Commissioner, Malabar Devaswom Board. The combined effect of these circulars, as will be stated in detail by us presently, is that certain directions prescribed as "guidelines" have been issued to the Trustees, of the temples under the supervision of the Malabar Devaswom Board ("M.D.B." for short), in the matter of selection and appointment of persons to various posts under such temples. These circulars are impugned by the petitioners as being beyond the statutory competence of the respondents and as being in excess of the powers with them for supervision under the Madras Hindu Religious and Charitable Endowments Act 1951 (hereinafter referred to as "the Act" for short).

2. The petitioner in W.P. (C)No. 4342/2014 is the Zamorin Raja of Kozhikode, who is the hereditary trustee of forty three temples and sub temples in the Malabar area; in W.P.(C)No.3728/2014, the petitioner is the Welfare Association of the Hereditary Trustees, which is claimed to be an Association formed to protect the interest and welfare of the various Hereditary Trustees of the temples in the erstwhile Malabar area ; and an individual, who has been appointed as a Dhobi in the in Pisharikavu Temple, is the petitioner in W.P.(C) No. 20464/2014.

3. The gravamen of the contentions and submissions of the writ petitioners is that under the specific mandate of Section 48 of the Act, all vacancies, whether permanent or temporary, amongst the office holders or servants of a religious institution, shall be filled up only by the Trustee where such office, sought to be filled, is not hereditary. Under the umbra of this statutory provision, the writ petitioners essentially claim that the Devaswom Board or its officers are statutorily incompetent to make any appointment, whether permanent or temporary and when they have no such power, the attempt in issuing the impugned circulars is an indirect method conceptualized by them to usurp such power, which is statutorily invested with the Trustees, by fixing guidelines and conditions which would operate to fetter such rights of the Trustees and deviously empower the Devaswom in controlling and even making such appointments.

4. We have heard Sri. M.P. Sreekrishnan, the learned counsel appearing for the petitioner in W.P. (C)No. 4342/2014, Sri. M.G. Ashokan, the learned counsel appearing for the petitioner in W.P.(C) No. 3728/2014 and Sri. V.N. Ramesan Nambisan, the learned counsel appearing for the petitioner in W.P.(C) No. 20464/2014. Since all the three Writ Petitions contain substantially similar averments and have sought similar prayers, we are proceeding to dispose of the Writ Petitions by this judgment and for the purpose of convenience, we treat W.P. (C) No. 4342/2014 as the lead case and the parties and the documents referred to herein will be as referred and mentioned in W.P.(C) No. 4342/2014, unless otherwise specifically stated.

5. Before we attempt to answer whether the impugned circulars are within the field of competence of the respondents in issuing them, a survey of the Act in question would be beneficial in order to ascertain the parameters of authority which are statutorily committed with the Board on one hand and the Trustees/ Executive Officers on the other.

6. The Preamble of the Act begins by saying that it is an Act provided for the better administration and governance to the Hindu Religious and Charitable Institutions and Endowments in the Madras State. This Act initially had its jurisdiction within the State of Madras. The Malabar State, which was part of Madras, was thus under the seizin of the said Act, as far as the Hindu Religious and Charitable Institutions and Endowments were concerned. The Act has its cover over all Hindu Religious and Charitable Institutions and Endowments. The scheme of the Act would make it indubitably clear that in the management of the

temples the role of the Trustees has been given great importance. The Trustees are classified as two, hereditary and non hereditary. The Hereditary Trustees are those who come to the office by succession devolved by hereditary right or being regulated by usage or such succession being specifically provided by the founder of the endowment under the scheme of succession. Non Hereditary Trustees, on the other hand, are appointed by the Commissioner. We are, at these Writ Petitions, concerned essentially about the powers of the Hereditary Trustees as is defined in the Act.

7. The position of Hereditary Trustees is defined in Section 6(9) of the Act. It will be useful for our analysis of the issue at hand to extract the section as under :

"Hereditary trustee" means the trustee of a religious institution succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force."

8. An Endowment is a dedication of property for the purposes of religion or charity having both the subject and objects and capable of ascertainment (see *Parama Nand v. Nihal Chand* (AIR 1938 PC 195)). It is settled that the endowment can validly be created in favour of an idol or temple. It is a peculiar facet of the Act that the right of administration of the temples is vested always with the Trustee or Board of Trustees. The temples are separate entities which are autonomous and independent and as such has its own source of funds and has a separate pecuniary corpus for all its activities. The Act does not provide for the funds of the temples to be transferred or to be understood as a common fund.

9. The Malabar Devaswom Board constituted under the Act exercises supervisory control over the temple administration to see that the funds of the temple or the endowment is not diverted for other purposes and that it is put to the most beneficial use for the temple. This power of superintendence has been mandated clearly under Section 20 of the Act. For ease of reference, the section is extracted as under :

"Powers and duties of the Commissioner in respect of religious endowments.- Subject to the provisions of this Act, the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner ; and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist."

For the effective exercise of these powers and for discharging the duties under the Act, the competent authorities of the Devaswom, as authorised by the Board, have also been invested with visitatory powers under Section 21 of the Act, to enter the premises of the religious institution or any place of worship in discharge of their duties and functions under the Act.

10. The Act, therefore, makes it irrefragable that the administration of all religious endowments, including temples, are always under the general superintendence and control of the Commissioner of M.D.B. and that he would have the power to pass orders to ensure that the endowments are properly administered and that their income is duly appropriated only for the purposes of the endowment. This power of superintendence is the liet motiff through out the Act. Even though the temples are autonomous and independent and not owned by the Devaswom Board (except those temples over which, under the provisions of Section 8B, the Board has assumed management as per the request of the Trustee), they are under the complete supervisory control of the Commissioner appointed under the Act and who is obligated statutorily to ensure that the endowments are administered at the highest standards and that their income is used and appropriated only for the purpose for which it is founded.

11. This is not the first instance, where the position of the trustees, vis-a-vis MDB, have been called in question. There have been litigations in the past which have led to various judgments being pronounced by this Court clearly declaring the position of the Trustees in relation with the M.D.B. The judgments that immediately come to our attention are Bhanunni v. Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department (2011 (2) KLT 312) and Bhanunni v. Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department (2011 (4) KLT 230). The first of the above judgments was in relation to the question as to whether the Trustee of a temple would come under the sweep of Right to Information Act. This Court declared without reason for any doubt that the power of the M.D.B. to supervise, regulate and control such establishments under the authority of the Act does not make the temples administrative units or offices of the M.D.B. The specific conclusions of the Court in that case is extracted below for ease of reference :

"Charitable endowment, Math, religious charity, religious endowment, religious institution, specific endowment, temple, trustee, are all terms defined in Section 6 of the H.R. and C.E. Act. Those definitions do not contain any semblance of any manner of jural relationship between any of those entities and the M.D.B. As if any of them is an administrative unit or office under the M.D.B. Establishment, which is a public authority for the purpose of the R.T.I. Act. There is no umbilical link between the M.D.B. And the temples or offices of the temples in the Malabar district, either statutory or otherwise. The power to supervise, regulate and control such establishments under the authority of the H.R. and C.E. Act does not make those establishments, the administrative units and offices, of, or, under, the M.D.B."

12. In the case reported in 2011 (4) KLT 230 (supra), the position between the Trustees and M.D.B. was more emphatically stated. We would not be required to restate them since we think that it would be beneficial in making our opinion to extract those observations as below :

"It may be mentioned here that even though the statutory provisions give wide

powers to the Board as well as its officers and it is stated that the Trustee is bound to obey the orders issued by the State and the Board etc., one has to notice that those powers are limited in nature. It is not as if that any order could be issued by the State, Board or its officers under the Act to curb the right of administration and management of the hereditary trustee. In case of rituals, ceremonies and rites of the temple, it is well settled that the State, Board and its officers have no say in the matter. In fact an impartial look at the Act would indicate that the power conferred on the authorities under the Act is confined to ensure that the affairs of the trust are properly administered and that the hereditary trustee does not use the funds of the institution for his personal benefits or does any act detrimental to the institution."

13. It is, therefore, leculent and without need of any further expatiation that the Trustee or the Board of Trustees of a temple cannot be equated to a servant or employee under the Board or seen to be under the absolute control of the Board. The Statute has indubitably invested the M.D.B. with supervisory powers but this would not whittle down the specific powers or privileges granted to the Trustees under the Act.

14. One of the most substantial right/privilege granted to a Trustee/Board of Trustees, under the Statute, is the power to appoint office holders and servants to religious institutions under Section 48 of the Act. It will be useful to extract the section as well for understanding the nature of the power granted there into the Trustee. The section reads as under :

"48. Appointment of office-holders and servants in Religious Institution.-

(1) Vacancies, whether permanent or temporary, amongst the office-holders or servants of a religious institution shall be filled up by the trustee in cases where the office or service is not hereditary.

(2) In cases where the office or service is hereditary, the next in the line of succession shall be entitled to succeed.

(3) Where, however, there is a dispute respecting the right of succession, or

Where such vacancy cannot be filled up immediately, or

Where the person entitled to succeed is a minor without a guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or

Where the hereditary office-holder or servant is suspended from his office, under Section 49, sub-section (1), the trustee may appoint a fit person to discharge the functions of the office or perform the service, until the disability of the office holder or servant ceases or another person succeeds to the office or service, as the case may be.

Explanation. - In making any appointment under this sub-section, the trustee shall have due regard to the claims of members of the family, if any, entitled to

the succession.

(4) Any person affected by an order of the trustee under sub-section (3) may, within one month from the date of the receipt of the order by him, appeal against the order to the Deputy Commissioner."

15. An ex facie reading of Section 48 would reflect that the power to make appointments by the Trustee is virtually plenary. It is not in any manner girdled by any other condition or constraint anywhere else in the statute. We do not think that there can be any serious dispute over this.

16. The issue, therefore, which essentially arises is whether the power of the Trustee to make appointment under Section 48 can in any manner be circumscribed or fettered by the M.D.B. or its authorised officers invoking the powers under Section 20 (supra) under the guise that such guidelines are part of the power of general superintendence and control in the hands of the Commissioner as is statutorily available to him.

17. As we have mentioned in the opening paragraph of this judgment, the challenge in these Writ Petitions is essentially as regards the two circulars issued by the Deputy Commissioner and the Commissioner, which are marked as Exhibits P1 and P3 in W.P.(C) Nos. 4342/2014 and 3728/2014 respectively and as Exhibit P4 in W.P.(C) No. 20464/2014. Exhibit P1 was issued by the Deputy Commissioner on 15.10.2010, providing that appointments to be made by the Trustee would be subject to eight conditions mentioned in the circular. The circular is in Malayalam and the translated version of the conditions are as follows :

"1. Application shall be invited by giving advertisement in a newspaper having circulation in the district wherein the temple situates, in the temple notice board, the Village/Panchayat Offices of the locality and the notice board of the Division Assistant Commissioner, by indicating the post, scale of pay and age limit prescribed under law, etc.

2. Appointments shall be made from a rank list prepared after an interview conducted by the interview board comprising Temple Trustee Board Chairman/ Management Trustee/Trustee, in case of a single member Trustee/an official member nominated by the Division Assistant Commissioner or Assistant Commissioner/Executive Officer, as its members. Prior permission from the Commissioner shall be obtained for constitution of such interview board.

3. Guidelines prescribed under law including the qualification shall be prepared before the date of interview and the mark list prepared after conducting the interview by observing the same shall be the basis for preparation of the list.

4. Appointments from the list shall be carried out only after preparation of the list and got it approved by the Trustee Board of the Temple.

5. The list shall contain candidates at the rate of three candidates for every one

vacancy.

6. Once the notified vacancy is filled up, the list and the interview board constituted for the purpose will expire.

7. The temple Thanthri shall be a member of the interview board in the matter of selection of ulthurai employees.

8. The relationship of candidates with the trustees, executive officer or of interview board members will be considered as a disqualification for appointment."

This circular was impugned on behalf of various Trustees and their Associations in a series of Writ Petitions, which were disposed of by this Court by judgment dated 08.08.2011 directing the Commissioner to hear the petitioners therein and to consider their representations against the said circular. In obedience to these directions the Commissioner, M.D.B. issued Exhibit P3 circular dated 28.09.2011 modifying some of the conditions imposed in Exhibit P1. This circular is also in Malayalam and the conditions contained in it are translated as under :

"(a) If the matter of appointment has been specifically provided in the Temple Administration Scheme, the selection shall be made transparently by constituting an Appointment Committee thereunder and necessary steps as prescribed by law shall be taken for the approval of the same.

(b) In the temples which receive either the management fund or Government aid, the appointment shall be made after constituting an Appointment Committee as mentioned in the Circular referred (2)nd.

(c) In the matter of appointment of employees to the temples not included in the above two sub-paragraphs, the appointment to the vacancies that may arise at present can be made after constituting an Appointment Committee by the Trustees after ensuring transparency, competency and social justice and in the manner prescribed by the Act and rules and subject to the approval of the Malabar Devaswom Board.

(d) In all temples, prior sanction shall be obtained in the circumstances wherein new posts are to be created."

This circular also mentions that all the other conditions in Exhibit PI circular issued by the Deputy Commissioner dated 15.10.2010 would continue to apply.

18. The order of the Commissioner was thereafter assailed by the Trustees by filing a revision before the Government under Section 99 of the Act. The Government by order dated 28.10.2013, however, rejected the revision holding the circulars to be in order and finding that there is nothing objectionable in them. This order has been produced as Exhibit P5 in W.P.(C) Nos. 3728/2014 and 4342/2014.

19. The petitioners have filed the above Writ Petitions challenging the circulars of

the Deputy Commissioner, Commissioner and the order of the Government as mentioned herein above.

20. We are, in these Writ Petitions, called upon by the petitioners to examine whether the conditions imposed in Exhibits P1 and P3, which have been shown above, would, in its nature, operation and ambit, be qualified to be mere supervisory guidelines issued by the authorities invoking their powers of superintendence manifested under Section 20 of the Act or if they would have the effect of encroaching into the powers of the Trustees for making the appointments authorised to them by the statute under Section 48 of the Act.

21. The M.D.B. has, in their counter affidavit and their submissions before us, countered the petitioners' assertions against the circulars and have sought to justify the issuance of Exhibits P1 and P3 saying that they have issued them under the powers available with them under Section 20 of the Act and Rule 9 of the Madras Hindu Religious and Charitable Endowments Rules ("the Rules" for short) framed under Section 100(2)(y) of the Act. This Rule is extracted as below :

"No person shall be appointed to the post of outdoor servant to which the duties of maintenance and custody of accounts and register collection of incomes and custody of cash or other valuables are attached, unless he has passed the III Form or the VIII Standard and no person shall be appointed to the post of outdoor servant carrying a salary of Rs.45 per month and above unless he is qualified for entry into the public service, under the notification for the time being in force relating to entry into public service."

This Rule, no doubt, provides for the qualifications that a candidate ought to possess for being appointed as an outdoor servant, and this Rule has not been objected to or impugned in any manner by the petitioners in these Writ Petitions. The respondents thus unequivocally assert that the conditions contained in the circulars are merely guidelines which have been issued by the competent authorities to ensure that the appointments are made fairly and legitimately and in compliance with the qualifications prescribed in Rule 9 above and that the income of the temple is not squandered and wasted by making frivolous and unnecessary appointments. They, in addition to this, take the cover of the directions contained in an earlier judgment of this Court in W.P.(C)No. 4450/2005, which was, in fact, referred to in Exhibit P1 circular, where this Court was dealing with the appointments made by the Zamorin Raja of Calicut in the year 1997 or so. This court had, in that judgment, directed that the Trustee while making the appointments shall follow fair procedure for selection and appointment. The judgment also contains a direction that "the trustee shall make appointments only by way of replacement on account of retirement/death/resignation of the incumbent If any post is to be created, he will take prior approval of the Deputy Commissioner". These directions are now sought to be implemented by the M.D.B. in issuing guidelines as have been contained in Exhibits P1 and P3 circulars, they assert.

22. The combined reading of Exhibits P1 and P3 circulars would perspicuously show that the conditions, in the nature of binding guidelines, that are to be followed before the Trustee can make an appointment is that he will have to obtain prior sanction of the Commissioner to fill up the posts ; that he will have to constitute an appointment committee for effecting appointments ; that he will have to call for applications from prospective candidates by causing publication of a notice showing the post, salary and age limit in a newspaper having circulation in the district where the temple situates as also on the temple notice board, in the Village/Grama Panchayat Offices and the notice board of the Divisional Assistant Commissioner; that he will have to create a list of candidates from among the applications received by him; and that a rank list of the candidates evaluated by the Appointment Committee will have to be created. The circulars also command that the Trustee shall make appointments only after obtaining prior permission of the competent authorities under the M.D.B..

23. While attempting to consider the validity or otherwise of these conditions, one has to bear in mind that the Trustee, as per the Scheme of the Act, is not expressly expected or impliedly intended to act on the dotted line drawn by the M.D.B. or its officers, but only to act within the limits of his powers as granted and fixed by the Act. It is obvious from the Act that wherever it was intended that the Trustee acts with the prior permission of the M.D.B. or its officers, it is specifically so provided. An instance of this is available in Section 29 where the Trustee can alienate property of the religious institution only with the prior sanction of the Commissioner. Similarly, whenever the legislature intended the M.D.B. or its officers to have financial control, it is also so specifically provided in the Act. For instance, Sections 25 to 28 of the Act command the Trustee to maintain a register showing, inter alia, scale of expenditure and conditions of service of officers attached to the religious institutions and also further provides that such register be submitted to the competent officer under the M.D.B. along with the accounts, returns and reports regarding the administration of the institutions, its funds, income and its appropriation. The officers of the M.D.B. are also, under Section 28, authorised to inspect all records, property and correspondence relating to the religious institutions. Similarly Chapter VII of the Act, which takes in Sections 70 to 79, obligates the Trustee to submit before the competent authority, a budget showing the probable receipts and disbursements of the institutions during the following calendar year, which is to be audited concurrently in the case of institutions with annual income of Rupees sixty thousand or above and annually in other cases. It is also statutorily mandated in Section 73 that the Auditor shall specify, inter alia, cases of irregular, illegal and improper expenditure or of loss or waste of money or other property caused by negligence or misconduct.

24. In contrariety to the above and other such sections in the Act imposing specific control over the Trustee, Section 48 of the Act provides unambiguously that all appointments shall be made by the Trustee. This power of the Trustee is not, trammled or delimited by any other specific constraint or condition in the

Act. However, it has to be remembered here that the Trustee is, by Section 24 of the Act, bound to administer the affairs of the religious institutions as a man of ordinary prudence would deal with such affairs, funds and properties as if they were his own ; to apply its funds and properties in accordance with the terms of the Trust, the usage of the institution ; and in compliance of all lawful directions of the competent authority.

25. The directions in the circular, therefore, that the Trustee shall always have an Appointment Committee constituted to make the appointments appear to be contrary to the clear sanction contained in Section 48 of the Act, which explicitly authorises filling up of the vacancies by the Trustee alone and no one else. The section does not talk in any manner about a committee to be constituted for appointments. The Rules framed under the Act also do not provide for any such committee and to the extent to which the Trustee is directed to constitute a committee appears to completely abrogate the powers given to him under Section 48 of the Act. It is obvious from the Act, especially Section 49 thereof, that all the office holders and servants attached to a religious institution are under the control of the Trustee including their disciplinary control. The Trustee has been given the power to fine, suspend and remove or dismiss any of them for misconduct or other valid cause. This power has been given to the Trustee obviously because he is the appointing authority under Section 48 of the Act, In the absence of anything in the Actor in the Rules mandating that a committee be constituted for the purpose of selection and appointment of office holders and servants in the religious institutions, the stipulation to that effect in Exhibits PI and P3 cannot stand the test of law.

26. Some of the other conditions in Exhibits P1 and P3 also appear to be in the nature of an attempt to sequester the manner in which the appointments are sought to be made by the Trustee. The stipulation that the Trustee will have to ask for the prior sanction of the Commissioner to fill up the vacancies also do not appear to be well founded for the same reasons as it relates to the constitution of the Appointment Committee. This is because the Trustee is, under the provisions of Section 48, entitled to make appointments as and when vacancies arise and the Act or Rules do not anywhere require the Trustee to obtain such prior permission. Even though not provided in the section, the only caveat would be on account of the directions contained in the judgment in W.P.(C)No. 4450/2005 (supra) that the Trustee shall take prior approval of the Commissioner if a new post is to be created and filled up.

27. The requirement in Exhibits P1 and P3 that all appointments made by the Trustee under Section 48, are to be approved by the M.D.B. also travels beyond the statutory perimeter of the supervisory powers invested with it and its authorised officers under the Act. Since the Act and Rules are again conspicuously without any requirement for such post-appointment sanction to be applied for and obtained by the Trustee or the appointees.

28. We have, however, no doubt that the M.D.B. through its authorised and

competent officers can, at any time, under the sanction of Section 48 of the Act, verify and ensure that all appointments made by the Trustee have been done validly, properly and fairly. However, the M.D.B. cannot insist that the Trustee obtain prior sanction for filling up the vacancies and then apply for and obtain approval from the M.D.B. for such appointments. However, if it becomes available to the notice of the Board or its authorised officers, through any source or person, that any such appointment has been made in violation of the qualifications prescribed in Rule 9 (*supra*), or that it is vitiated by factors of nepotism, capriciousness, corruption, unfairness or such other, it would always be within their province of the statutory powers under Section 20 to seek from the Trustee such clarification or explanation as is requisite and if the allegation is proved following due process, to direct the Trustee to cancel such appointment and issue such attended consequential orders.

29. We have been guided in our view as above by those provisions in the Act, namely Section 23, which obligate the Trustee to obey all lawful orders issued to him by the Government, or the M.D.B. and its competent officers, namely, the Commissioner, the Deputy Commissioner and the Assistant Commissioner. We also see from Sections 45 and 46 of the Act that it invests with the M.D.B., through its competent officers, to suspend, remove or even dismiss a Trustee who wilfully disobeys any such lawful order issued to him or commits any act of malfeasance, misfeasance, breach of trust or neglect of the duty in respect of the Trust. The express obligation cast upon the Trustee to obey orders and the explicit power authorised to the M.D.B., through its officers, to visit the Trustee with serious consequences, if lawful orders are disobeyed, would operate to ensure that the Trustee would act in a manner that is fair and legal in making appointments under Section 48 of the Act.

30. We have also noticed from the counter affidavit on record on behalf of the respondents and the submissions made by the learned counsel for the respondents at the Bar that the M.D.B. affirms the validity of exhibits P1 and P3 circulars on the ground that the Board is providing financial assistance to the temples and that, therefore, they ought to have a say in the matter of appointments of office-holders and servants in the temples. We have anxiously considered this contention. This issue has already been answered earlier in the decision reported in 2011 (2) KLT 312 (*supra*), where this Court has found categorically that Section 76 of the Act would show that the temples have to contribute to the Board and not vice-versa. Chapter VIII of the Act, which deals with Sections 76 to 79, mandates that the religious institutions shall, from the income derived from it, pay to the Board such contribution not exceeding 5% of its income in respect of its services rendered by the Board and their officers. Chapter IX of the Act deals with establishment of Malabar Devaswom Fund, which is essentially constituted with the contributions payable by the temples under Section 76 of the Act. In these circumstances, the claim of the Board that since it is financing the temples, it should have control over the appointments made by the Trustee does not seem to be on sound hypostasis. In any event of

the matter, when the Statute itself provides for well contoured delineation of the powers of the various authorities under the Act, including the Trustee, it would not be up to the Board, for any other reason other than specifically stated in the Statute, to attempt to enter into the jurisdiction and domain reserved for the Trustee on the ground that they are making payments to the religious institutions from the Malabar Devaswom fund. Even if this is accepted to be true, it would not give the power to the Board to enter into the field of appointments, which is specifically invested with the Trustee under Section 48 of the Act. What is statutorily vested cannot be attempted to be divested by the Board by issuing circulars and executive orders.

31. The word superintendence and its derivatives are not words of precise import and must often be construed in the light of the context or unless controlled, they can easily cover and enter into the areas which were not intended. Superintendence connotes supervision. It would mean, keeping in check, watch over the work of another and it would also imply direction, guidelines or even instructions. Superintendence is not dictation. When the Statute specifically permits certain functions to be discharged by the Trustee, such powers cannot be gelded in any manner by the Board by issuing executive orders under the guise of superintendence. As we have already noticed above, the power of superintendence is entrusted to the Board specifically as is the power to appoint given to the Trustee. Since the Act leaves no room for suspicion in Section 48 that the power of the Trustee to make appointments under it is in the nature of a plenary power, the Board can then only supervise such exercise of power by the Trustee to ensure that the Trustee has acted in accordance with the provisions and mandate of the Act and Rules. We are, however, afraid that the three conditions we have noticed above in this judgment, which are imposed by Exhibits P1 and P2 travel beyond the power of superintendence, but virtually is an attempt to arrogate the power of appointment to themselves by the Board.

32. In the above circumstances, in the light of our observations above, we are of the view that Exhibits P1 and P3 circulars to the extent it directs that the Trustee should obtain prior permission before regular vacancies are filled up, that the Trustee shall constitute an Appointment Committee in order to make appointments and that the appointments made by the Trustee have to be mandatorily approved by the Board after such selection would fail the test of law and the provisions of Section 48 of the Act.

33. However, Condition No. 1 in Exhibit P1 circular that the Trustee shall notify the appointment by publication in the newspapers and other modes thereunder is, according to us, a matter of fairness and prudence and this condition is, therefore, in order. So also is Condition No.7 in Exhibit P1 circular that the temple Thanthri shall be consulted by the Trustee/s in the matter of appointment of Ulthurai servants, since the duties of such servants relate to the performance, or rendering assistance in the performance of pooja, rituals and other services to the deity, the recitation of Mantras, Vedas, Prabandas, Thevarams and similar

invocations, and the performance of duties connected with such performance or recitation (see Rule 2(a) of the Rules framed under Section 100(2Xy) of the Act for the definition of Ulthurai servants). All other requirements and conditions mentioned in Exhibits P1 and P3 circulars or any other relevant circular would also continue to hold the field.

34. From a conspectus of the above discussions, we hold that condition Nos. 2 to 6 in Exhibit P1 circular and condition Nos. (a) to (c) in Exhibit P3 circular are ultra vires of the powers of the Board under Section 20 of the Act and are, therefore, set aside and vacated. It is further directed that the Trustee on receipt of applications pursuant to the notification, as is required under the circulars, shall make a list of candidates who are eligible and qualified under Rule 9 framed under Section 100(2)(y) of the Act and shall then proceed to make appointments from such list after a careful evaluation of the suitability and qualifications of the candidates included therein.

35. The law having been so settled by us, we notice that the petitioner in W.P.(C) No. 20464/2014 is a person who has been regularised in service as a Dhobi by the Executive Officer in consultation with the Board of Trustees of Sree Pisharikavu Temple. The said temple is administered under a scheme framed under Section 58 of the Act. The mode of appointment, as per the scheme, is vested with the Executive Officer in consultation with the Board of Trustees. The declaration of law as above, relating to the power of the Trustee to make appointments, would apply in all force to this case also, since under the Scheme of Administration of the Temple, the Executive Officer, in consultation with the Board of Trustees, has been entrusted with the right of appointment. It is ineluctably so because an Executive Officer appointed under a Scheme or under Section 66(1) of the Act has been directed to be deemed to be the Trustee under Rule 16 of the Rules also. When the Executive Officer is so deemed to be, all the provisions that apply to the Trustee would also obviously apply to the Executive Officer.

36. In this case, the petitioner was continuing in service as a temporary employee for about four years and he was sought to be regularised by the Executive Officer in consultation with the Board of Trustees. However, the Commissioner of M.D.B., who is arrayed as the first respondent in the Writ Petition, objected to this and directed that the Executive Officer shall notify the post for regular appointment of Dhobi-cum-Helper without regularising the petitioner as a "Dhobi". This decision has been shown as Exhibit P1 (a) in the said Writ Petition. Since we have already noticed that the power of appointment is with the Executive Officer and the Board of Trustees as per the Scheme of Administration of the Temple, we direct the first respondents W.P.(C) No. 20464/2014 to re-consider the case of the petitioner and issue appropriate orders on the recommendations made by the Executive Officer in consultation with the Board of Trustees in the matter of regularisation of the petitioner as a Dhobi or as a Dhobi-cum-Helper. This shall be done within a period of two

months from the date of receipt of a copy of this judgment.

The Writ Petitions are disposed of as above. We make no order of costs in any of the cases. The parties are directed to suffer their respective costs.