

27-Jan-2020

To:

- (1) Additional Chief Secretary-
Government of Tamil Nadu
Tourism, Culture and Religious
Endowments Dept.
Secretariat - Fort St. George
Chennai 600 009

- (2) The Principal Secretary/ Commissioner
Hindu Religious & Charitable Endowments Dept.
Nungambakkam High Road
Chennai 600 034

From:

T R Ramesh

[REDACTED]

Chennai 600004

Dear Sirs,

Sub: Continuing Illegal transfers and utilisation of funds belonging to Hindu Religious Institutions by the Government and the instrumentalities of the Hindu Religious and Charitable Endowments Department – Reparation of such illegal transfers and utilisation of funds with interest – regarding – **Notice issued.**

1. The 1st of you are the Principal Secretary, Tourism, Culture and Religious Endowments Department. The 2nd of

you are the Commissioner of Hindu Religious and Charitable Endowments (Administration) Department.

2. I am the President of Indic Collective Trust and I issue this notice to you.

3. The Hindu Religious and Charitable Endowments (Administration) Department (hereinafter referred to in this notice as the HR & CE Department for brevity) for which the 2nd of you are the Department Head and Corporate Sole claims in its website that 44,121 Hindu temples and endowments are under its administrative control.

4. The 2nd of you and your subordinates in the HR & CE Department ostensibly derive authority and powers under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the Act 1959 in this notice for brevity) and the Rules framed thereunder.

5. Many mandatory duties are cast upon the 2nd of you and your subordinates in the HR & CE Department under the Act 1959. The following are some of the mandatory duties:

- (i)** Preparation of Registers under Section 29 of the Act 1959 as soon as the management of Hindu Religious Institutions are taken over by the HR & CE Department, recording all

particulars and properties of the said Institution.

- (ii)** Prepare Registers under Section 30 of the Act 1959 every year regarding additions and deletions of properties of the Institution.
- (iii)** Consolidate once in ten years (under Section 31 of the Act 1959) all those registers that were prepared under Section 30 of the Act 1959.
- (iv)** Under Section 47 of the Act 1959, appoint Trustees having requisite qualifications under Section 25-A for Hindu Institutions having an annual income less than Rs. 10.00 lakhs and having non-hereditary Trustees.
- (v)** Conduct concurrent audits under Section 87(3) of the 1959 Act for Hindu Religious Institutions having annual income of Rs. 5.00 lakhs or more.
- (vi)** Conduct external audits under Section 87(4) for all Hindu Institutions that have more than Rs.1000/- as its annual income.
- (vii)** Under Section 23 of the Act 1959, the Commissioner is accorded control and supervisory powers to protect the properties of the Hindu Religious Institutions and realise the due income therefrom and ensure that such income and other income are utilised for

the purposes for which the Hindu Religious Institutions were founded or exist.

(viii) Resolve audit objections concerning the Hindu Religious Institutions under your administrative control within 6 months of receiving the relevant audit reports.

(ix) Preserve and maintain the temple structures and the images therein including inscriptions, statues, icons and murals with great care and diligence.

6. As seen from Section 23 of the 1959 Act, the 2nd of you, has to, through your controlling and supervisory powers, ensure that the due income of Hindu Religious Institutions are realised and that they are utilised ONLY for the purposes for which such institutions were founded or exist.

7. Under Section 36 of the Act 1959, the due process of calculating the 'surplus funds' of a Hindu Religious Institution after mandatorily providing for certain expenses and how such surplus funds may be utilised by a Trustee are given.

8. Section 36 of the Hindu Religious and Charitable Endowments Act, 1959 is reproduced below:

Section 36 - Utilisation of surplus funds

With the previous sanction of [the Commissioner], and subject to such conditions and restrictions as may be prescribed, the trustee of a religious institutions may appropriate for any of the purposes specified in sub- section (1) of section 66—

(i) any portion of the accumulated surplus of such institution, and

(ii) if, after making adequate provision for the purposes referred to in sub-section (2) of section 86 and also for the arrangements and the training referred to in sub-section (1) of section 35, there is a surplus in the income of the institution for any year or any portion of such surplus :

Provided that the trustee shall, in appropriating the surplus under this section, give preference to the purposes specified in items (a) to (g) of sub-section (1) of section 66 :

Provided further that, before according the sanction under this section, [the Commissioner] shall publish the particulars relating to the proposal of the trustee in such manner as may be prescribed, invite objections and suggestions with respect thereto and consider all objections and suggestions received from persons having interest :

Provided also that, the sanction aforesaid shall be published in such manner as may be prescribed :

Provided also that, nothing in this section shall prevent the trustee of a math or of a specific endowment attached to a math from utilizing the surplus referred to in this section in such manner as he deems fit.

- 9.** It is thus clear that in order to utilise surplus funds of a Hindu Religious Institution for (and only for) the purposes specified in sub-section 66(1) **the following procedures are mandatory:**
- a.** Only the Trustee(s) of a Hindu Religious Institution can appropriate funds under Section 36 of the Act 1959.
 - b.** Commissioner has to give prior sanction for such appropriation of funds
 - c.** Commissioner can give sanction only subject to conditions and restrictions prescribed viz. *Utilisation of Surplus Funds Rules (G.O. Ms. No. 4524, Revenue, dated the 5th November, 1960)*
 - d.** Before calculating the "surplus funds" adequate provisions must be made for the purposes referred to in sub-section(2) of Section 86 and also for the arrangements and the training referred to in sub-section (1) of Section 35
 - e.** Trustee shall give preference in appropriating funds to the purposes specified in items (a) to (g) of sub-section (1) of Section 66.
 - f.** Commissioner shall invite objections and suggestions in a manner prescribed
 - g.** Sanction of the Commissioner for appropriation of surplus funds for allowed purposes shall be published in a prescribed manner.

10. From the year 2011, the 1st of you and the 2nd of you have deliberately and miserably failed in appointing Trustees to Hindu Religious Institutions as mandatorily required under Section 47 of the Act 1959. Worse still, you have replaced Hindu Citizens who were non-hereditary Trustees in more than 19,000 Hindu Temples by servants of the HR & CE Department, who are unabashedly touted by the two of you as "Fit Persons" - since 2011. These servants of the HR & CE Department who have been serving as "Fit Persons" for an "interim period" (sic) of nine years are misfits vis-a-vis qualifications mandatorily required for Trustees under Section 25-A of the Act 1959. Further, the act of vesting the administration of Hindu Religious Institutions in secular authorities has been expressly found unconstitutional by two Constitutional Benches of the Hon'ble Supreme Court of India in the Shirur Mutt Case (AIR 1954 SC 282) and Ratilal Panchand Gandhi Case (AIR 1954 SC 388). The Proviso to Rule 2(1) of the Functioning of Board of Trustee Rules framed under Act 1959 proscribes the interim period for which a "Fit Person" could be appointed to a maximum of three months only. Thus, in temples where there are no hereditary trustees, no funds could have been appropriated under Section 36 of the Act 1959 without following the due process laid down under Section 36.

11. Further, as per Government Order No. 223 Tamil Development, Religious Endowments and Information (R.E. 3.1) dated 10.06.2011 and as per Government Order No. 264 Tamil Development, Religious Endowments and Information (R.E. 3.1) dated 11.07.2011 the Fit Persons can be appointed only to carry out very essential matters of the temple like pooja expenses and salaries. Transfer of surplus funds, contribution to Commissioner's Common Good Fund and alienation of properties, including leases beyond a period of five years, are beyond the powers of such "Fit Persons" appointed by the 1st of you or the 2nd of you or the instrumentalities working under the 2nd of you.

12. Section 97 (1) of the Act 1959 says that it shall be lawful for the Commissioner to create a Fund to be called the Hindu Religious and Charitable Endowments Common Good Fund [hereinafter in this section referred to as the said Fund], out of the contributions voluntarily made by the religious institutions from their surplus funds or by any person for the renovation and preservation of needy temples and their building and paintings, for the promotion and propagation of tenets common to all or any class of religious institutions and for any of the purposes specified in sub-section (1) of section 66. Here again, the key word is "**voluntarily**" and since this is also given from the surplus funds of the Hindu Institutions the due procedure under Section 36 of the Act 1959 should be scrupulously followed for these appropriations and/or contributions as well.

13. I have now come to know from perusing various records including audit reports, information received under the Right to Information Act, 2005 and other sources, that there have been instances of gross mis-appropriation of Hindu temple and endowment funds by the 1st of you and the 2nd of you and HR & CE Department instrumentalities functioning under the 2nd of you for purposes alien to the said temples and endowments and for purposes not sanctioned under the Act 1959 and the Rules framed thereunder. Almost all the contributions made in the last ten years to the Commissioner's Common Good Fund have been made at the direction and insistence of the 2nd of you i.e. the Commissioner of the HR & CE Department.

14. In this regard I wish to place the following as examples of instances of misappropriation of temple and endowment funds that were made without following the due process laid down under Section 36 of the Act 1959 and the Rules framed thereunder and for purposes not sanctioned under the said 1959 Act :

| S.No. | Temple | Approval Details | Purpose | Amount In lakhs |
|--------------|-------------------------------|-------------------------------------------------------|---------------------------------------------------|------------------------|
| 01. | Tiruttani Sri Subramaniaswamy | Commissioner R.C. No. 49206/2005/Y2/ dated 24.06.2006 | Renovation of Commissioner's office | 25.00 |
| 02. | Tiruttani Sri Subramaniaswamy | Commissioner R.C. No. 49206/2005/Y2/ dated 24.06.2006 | Renovation of Commissioner's office | 25.00 |
| 03. | Tiruttani Sri Subramaniaswamy | Commissioner Proc. R.C. No. | Library Building for the office of Commissioner's | 5.00 |

| | | | | |
|-----|------------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------|
| | | 34093/2011/Y1 dated 16.11.2011 | | |
| 04. | Tiruttani Sri Subramaniaswamy | Commissioner Proc. R.C. No. 34093/Y1 dated 16.11.2011 | Library, other constructions in Commissioner's Office | 11.20 |
| 05. | Sri Vadapazhani Andavar Temple | No details given under RTI | Conference hall in Commissioner's office | 7.00 |
| 06. | Sri Vadapazhani Andavar Temple | No details given | Improvement of toilets in the office of Commissioner | 2.19 |
| 07. | Sri Vadapazhani Andavar Temple | No details given | Decorative works for the Reception Centre in the office of Commissioner | 9.95 |
| 08. | Pazhani Sri Dhandayuthapani Swamy Temple | R.C. 36772/2015/K Z dated 16.05.2017 | Computerization of Commissioner's office | 15.00 |
| 09. | Pazhani Sri Dhandayuthapani Swamy Temple | R.C. 22760/2016/G3 dated 27.05.2016 | Security Camera for Mahamaham Festival in Kumbakonam | 10.00 |
| 10. | Pazhani Sri Dhandayuthapani Swamy Temple | R.C. 12895/2015/ P1 dated 08.10.2016 | For Department Pension Fund meant for temple employees | 400.00 |
| 11. | Pazhani Sri Dhandayuthapani Swamy Temple | No prior approvals taken | Commissioner Common Good Fund 2010 to 2017 | 2345.00 |
| 12. | Sri Sankara Narayanaswamy Temple, Sankarankoil | R.C. 36773/2015/K2 dated 29.08.2016 | Photocopier machine for Office of Commissioner – HR & CE Dept. | 0.78 |
| 13. | Six temples | Chennai Joint Commissioner R.C. 7085/2013/A1 dated 06.03.2017 | For supply one tanker of water every day to the office of Commissioner | Not known |
| 14. | Three temples in Chennai | R.C. No. 1858/2017-1 J1(2) dated 05.06.2017 | For air-conditioning the office of the Chief Audit Officer | Not known |
| 15. | Twelve temples in Tamil Nadu | R.C. No. 29185/G1 dated 01.11.2016 | Temple employees functioning as typists in the Office of the HR & CE Commissioner | Not known |

15. Besides these arbitrary and unsanctioned appropriation of funds, there are other misappropriation of temple funds by which temple and endowment funds are arbitrarily and/or unlawfully taken away. Supply of food and water and even "Eurocell" AAA batteries are demanded from Hindu Temples for meetings conducted in the Office of the Commissioner. Innova cars have been bought using the funds of Sri Karumariamman Temple, Thiruverkadu for the use of the Minister for HR & CE Department and his assistant. There are about 10 drivers who are employees of Hindu temples but are working as drivers for HR & CE Department officials. **The 2nd of you was found unabashedly using the car belonging to Sri Kamakshi Amman Temple, Mangadu. Further the fuel expenses and maintenance expenses of that car was forced on the said temple, month after month.** Similarly, the Additional Commissioner working under the 2nd of you continues to use the Car belonging to Sri Mariamman Temple, Samayapuram and similar to the illegality cited example above, the fuel and maintenance expenses for the car used by the servant of the HR & CE Department are met from the funds of Sri Mariamman Temple, Samayapuram.

16. I wish to point out to you Sirs, that **such chronic misappropriation of funds of Hindu Religious Institutions that are under your control and supervision in a systematic manner would attract the**

penal provisions of Sections 405, 406, 408 and 409 of the Indian Penal Code besides attracting Sections 108, 109 and 120B of the said Code.

17. Inspired by the unrepentant and unchecked misappropriation of temple funds for non-temple purposes and for purposes not sanctioned by the 1959 Act and carried out by the 1st of you and the 2nd of you and without following due process laid down in the said Act, the Regional Joint Commissioners working under the 2nd of you are shamelessly asking the temples having good Hundie collections to meet their Regional office expenses and even some of their personal expenses.

18. The following are some of the instances of the Regional Joint Commissioners of the HR & CE Department and Executive Officers of temples, committing Breach of Trust by misappropriating funds and properties of temples over which they have dominion:

| S.No. | Temple | Payment Voucher Nos. | Purpose | Amount Rs. |
|--------------|--------------------------------------------------|--------------------------------------------------------------------|---------------------------------------------------|-------------------|
| 01. | Sri Mullaivananatha Swamy Temple, Tirukkarugavur | 910,926/7, 1045/6, 1203/4, 1337/8, 34/5,43, 124-126 of 2012 | Payment to temporary staff of Thanjavur JC Office | 75,000 |
| 02. | -do- | 744/5, 751, 872, 970/1, 1058/9, 1142/3 1337/8 of 2013 | Payment to JC Office staff | 151,000 |

| | | | | |
|-----|-----------------------------------------------|----------------------------------------------------------|-------------------------------------------------------------|----------------|
| 03. | -do- | 256 of 2013 | Joint Commissioner's phone expense | 2301 |
| 04. | -do- | 326 of 2013 | Salary of Jeep Driver – Asst. Commr's Office | 5000 |
| 05. | -do- | 02, 487, 567 of 2014 | JC Office Ambassador Car Repair Expenses | 26507 |
| 06. | -do- | 644 of 2014 | Photocopier toner for JC Office | 6800 |
| 07. | -do- | 407 of 2015 | Commissioner Common Good Fund | 873900 |
| 08. | -do- | 1309 | Commissioner Common Good Fund | 919000 |
| 09. | Sri Subramaniaswamy Temple, Tirupparankundram | Fasali 1426, 1427, 1428 | Commissioner Common Good Fund | 600000 |
| 10. | -do- | Commissioner Proc R.C. No. 3135/2015 Y3 dated 10.08.2015 | For Construction of Madurai JC Office | 1250000 |
| 11. | -do- | Fasali 1426,1427 & 1428 | Stationery, Fax, Daily wages to Typist of Madurai JC Office | 265356 |

19. With servants of the HR & CE Department functioning as "Fit Persons" in Hindu Religious Institutions and the Executive Officers running the day to day affairs of such Hindu Institutions (with rampant and shameful practice of the Executive Officers also doubling up as the Fit Persons in the same institutions in certain temples including Sri Dhandayuthapani Swamy Temple, Pazhani) Hindu Religious Institutions have become mere extensions of the HR & CE Department. Armed with the dubious practice of appointing the department servants as "Fit Persons" the First of you and the Second of you and the officials of the HR & CE Department

working under the Second of you have abused your unsanctioned and unbridled power and committed breach of trust to misappropriate funds and properties belonging to Hindu Religious Institutions for purposes alien to the said Hindu temples and endowments and for personal and department purposes. These are criminal misappropriation of funds by persons acting as trustees but are in reality criminal breach of trust by Public Servants having dominion over properties of such temples and endowments.

20. Through this notice, 1st of you and the 2nd of you are hereby called upon to conduct an external audit of the following by panel of auditors formed by the Indian Institute of Chartered Accountants of India, Madras Chapter by selecting such auditors from its registered Fellow Members or by the panel of auditors selected by the Comptroller and Auditor General of India from its pool of audit staff and officers;

(a) the funds transferred from 01.01.2010 to 31.13.2020 from the temples of Sri Dhandayuthapani Swamy Temple, Pazhani, Sri Ramanathaswamy Temple, Rameswaram, Sri Ranganathaswamy Temple, Srirangam, Sri Mariamman Temple, Thiruverkadu, Sri Arunachaleswarar Temple,

Tiruvannamalai, Sri Kapaliswarar Temple, Chennai, Sri Subramaniaswamy Temple, Tiruttani, Sri Subramaniaswamy Temple, Tiruchendur, Sri Meenakshi Sundareswarar Temple, Madurai and Sri Vadapazhani Andavar Temple, Chennai, Sri Parthasarati Temple, Chennai-05, Sri Abathsagayeswarar Temple, Alangudi, Sri Sukavaneswarar Temple, Salem, Sri Subramaniaswamy Temple, Marudhamalai, Sri Mariamman Temple, Samayapuram, Sri Karbaratchambigai Temple, Tirukkarugavur, Thanjavur District, Sri Swaminathaswamy Temple. Swamimalai, Sri Subramaniaswamy Temple, Tirupparankundram and Sri Mariamman Temple, Bannari to any other entity as funds transfers under Section 36 or otherwise.

- (b)** The funds contributed to the Commissioner's Common Good Fund from the temples mentioned in (a) above during the period 01.01.2010 to 31.12.2019

- (c)** Purposes of the Cars and motor vehicles bought using temples funds for the above temples for the period mentioned above and the usage of such cars and motor vehicles and the expenses related thereto for the period 01.01.2010 to 31.12.2019
- (d)** Number of temple employees working in the offices of the HR & CE Department including the office of the Commissioner – HR & CE Department and in the office of the Religious Endowments Department, Government of Tamil Nadu, the impact of financial costs to temples due to this, etc. from 01.01.2010 to 31.12.2019
- (e)** Funds appropriated from temples for the expenses or purchases of the various sub-departments in the HR & CE Department including the office of the Commissioner or Regional Joint Commissioners' offices or Regional Assistant Commissioners' offices or for Tamil Nadu Government Departments or for Ministers of the Government or their offices during

the period 01.01.2010 to
31.12.2019.

21. I had earlier issued a similar notice to the 1st of you and 2nd of you on 27.08.2018. In spite of giving adequate and authentic details of misappropriation of funds belonging to Hindu Temples and other institutions under your administrative control, in the said notice you have chosen not to reply but maintain a stoic silence for more than a year. Worse still, the shameful practice of appropriating temple funds for illegal purposes continues under the 1st of you and the 2nd of you.

22. The 1st of you are now called upon to make necessary arrangements within 2 weeks of receipt of this notice to initiate the above sought external audit either by a panel of Chartered Accounts from chosen and designated by the Indian Institute of Chartered Accounts – Chennai Chapter or by a panel of auditors designated by the Comptroller and Auditor General of India and the audit should be conducted and report given within three months. If the findings of the external auditors show that the funds of the Hindu Temples and Endowments have been appropriated without following the due process of law and/or for unlawful purposes/purposes not sanctioned under Act 1959, the 1st of you and the 2nd of you should make immediate arrangements

to return the moneys to the temples and endowments concerned with 18% interest from the date when the funds were appropriated. The 1st of you and the 2nd of you should also recommend without delay to the Government to take specific and appropriate criminal proceedings and departmental action against those who have misappropriated temple and endowment funds and utilised them for purposes that are alien to true purposes for which such temples and endowments were founded or exist. Penal and disciplinary action should also be taken against those who had appropriated Hindu Temple and Endowments funds without following the due process laid down in the 1959 Act and the Rules framed thereunder.

23. This notice deserves a reply and I trust you shall adhere to the directions issued in paragraph No. 33 Secretariat Office Manual and reply to this notice without any delay.

Sincerely

(T R Ramesh)
President – Indic Collective Trust