

IN THE HIGH COURT OF JUDICATURE AT MADRAS**MADURAI BENCH**

(Special Original Jurisdiction)

W.P(MD).No. of 2020

T. R. Ramesh
S/o. Dr. T.N. Ramachandran,
3B, Natraj Apartments,
17 D'Silva Road,
Mylapore,
Chennai – 600 004.

... Petitioner

Vs

1. The Commissioner
Hindu Religious and Charitable
Endowments Department,
Chennai.
2. The Executive Officer/fit Person
Sri Dhandayuthapani Swamy Temple,
Palani.

... Respondents

AFFIDAVIT OF Mr. T.R.RAMESH

I, T.R.Ramesh, son of Dr.T.N.Ramachandran, Hindu, aged about 58 years, residing at Flat No. 3B, Natraj Apartments, 17 D'Silva Road, Mylapore, Chennai – 600 004, do hereby solemnly affirm and sincerely state as follows: -

1. I am the petitioner herein and as such I am well acquainted with the facts and circumstances of the case and I am competent to swear to this affidavit.
2. I respectfully state that I am filing the above writ petition in the nature of Writ of Certiorari, calling for records pertaining to impugned Tender Notification bearing R.C.No. 805/2020/Civil, dated 20.08.2020, passed by the 2nd respondent and quash the same.
3. I respectfully state that I am a born Hindu, having absolute faith on Hinduism, with particular reference to worshipping of Hindu deities. I have been visiting almost all the temples in the State of Tamil Nadu and I am staunch and strong believer of spiritual rights and the like, associated with Temples.



4. I respectfully state that I am currently the President of Temple Worshipper's Society, Chennai, a Society registered under the Societies Registration Act, 1975. I have been espousing the cause of Hindu Temples, the protection of their heritage, structures and clean administration of Temples; by carrying out research, creating public awareness, taking legal initiatives, including filing of Writ Petitions and/or Public Interest of Litigations, for the purposes of protecting and maintaining temples, their traditions, antique, heritage structures, statuaries and icons; protection of moveable and immoveable properties of temples and endowments – including statuaries and icons belonging to the temples and connected endowments; and defending the fundamental, religious and cultural rights guaranteed by the Constitution of India under Articles 25, 26 and 29(1).
5. I respectfully state that I have filed a number of Public Interest Litigations on similar issues and currently, writ petitions in W.P. Nos. 11412 and 11413 of 2015 regarding non-appointment of Trustees to Hindu Temples, as mandatorily required under Section 47 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the 1959 Act in this Writ Petition for brevity). I crave leave to submit that I have got a grievance in respect of Sri Dhandayuthapani Swamy Temple, Palani, in the matter of non-appointment of Trustees and the Government's appointment of Executive Officers as Fit Persons, thereby allowing the Government servant to hold the post of Fit Person, which has got nexus to ritual aspects and allowing such government servants to act as Fit Persons beyond the period stipulated under the Act.
6. I respectfully state that Government had been appointing Executive Officers to listed and non-listed Temples under Section 45 of the HR & CE Act without there being any Rules framed. This anomaly was brought to the legal parlance in the case of Dr. Subramanian Swamy & others vs. State of Tamil Nadu & others, reported in (2014) 5 SCC 75, wherein the Hon'ble Supreme Court has held that appointments of Executive Officers, without Rules being framed, is ultra vires. In this regard, as stated above, I have challenged the appointment of secular Executive Officers as Fit Persons of Hindu Temples and their propriety in W.P. Nos. 11412 and 11413 of 2015. The present Temple in discussion also comes not only within the scope of those two writs, which are pending on the file of the Principal Bench of this Hon'ble Court but also on this very temple continuing under the control of the State Government and consequently under the HR & CE Department in spite of the clear



orders of the Hon'ble Supreme Court of India quashing the extension of notification of this and another 45 temples and endowments by an order dated 10.02.1965, reported in 1965 AIR 1578. The renotification of this temple under Section 75-B of the 1959 Act is also in violation of the dictum of an Hon'ble Divisional Bench of this Hon'ble Court by its order dated 22.12.1993 and reported in 1994 II MLJ 313. I beg to submit that I reserve my rights in the matter of agitating the validity of appointment of an Executive Officer to the petition mentioned Temple by way of a separate petition.

7. I respectfully state that Sri Dhandayuthapani Swamy Temple, Palani is the highest grossing Temple in Tamil Nadu. It belongs to Koumaram Sect of Saivite Denomination. This Temple has got a legal history regarding the Notifications under the Hindu Religious Endowments Act of various periods. The respondent department, usually appoint Trustees to Temples that do not have Hereditary Trustees, for a specified period. However, in the petition mentioned Temple, no Trustees have been appointed since 2011, even though, under Section 47 of the Act, the Government has to mandatorily appoint Trustees for Temples having an annual income of more than Rs. 10,00,000/- (Rupees Ten Lakhs only). I state that the Government, by way of amendment in the 1958 Act, inserted Section 25A, which prescribes mandatory qualifications for persons to be appointed as a Fit Person. The respondent department, vide G.O. Ms. No. 23, Tamil Department, Religious Endowment and Information (R.E.3.1) Department, dated 10.06.2011 (hereinafter referred to in this Peition as G.O. 223 for brevity), by which Servants of the respondent department were made Fit Persons of Hindu Temples, including the petition mentioned Temple. I further state that the said appointment of Fit Persons, vesting the administration of the Hindu Religious Institution on a secular person, was said to be for an interim period. It is important to note that the full term of the validly constituted Board of Trustees under Section 47 of Act, is two years. More than 9 years have passed since the passing of the G.O., above referred to. Such interim period could be only for 90 days as per proviso to Rule 2(1) of the Functioning of Board of Trustees Rules, framed under the 1959 Act.
8. I respectfully state that the 2nd respondent has also been appointed as the Fit Person, which is a serious violation. The 1st respondent, vide his proceedings in Pro.R.C.No. 34501/2019/B1, dated 23.09.2019, has appointed on Dr. V. Jayachadra Banu Reddy, I.A.S., as the Executive Officer of the petition mentioned temple. At the outset, I



submit that he is not a law graduate and hence he is not eligible to be appointed as an Executive Officer for a temple that is classified as a Joint Commissioner/Executive Officer designated temple.

9. I respectfully state that appointment of a Fit Person to Sri Dhandayuthapani Swamy Temple, Pazhani is vide G.O. Ms. No. 223 Tamil Development, Religious Endowments and Information (R.E.3.1) Department dated 10.06.2011. In that G.O. it is very clearly stated that the Fit Person recommended to be appointed is the Joint Commissioner/Executive Officer, Pazhani. Since the current incumbent Executive Officer is not a law graduate, he cannot be a Joint Commissioner in the Hindu Religious and Charitable Endowments Department (hereinafter referred to as the HR & CE Department in this petition for brevity).

10. I respectfully stated that in cases of appointment of Fit Persons, it can only be for an interim period and that too to carry out very basic administrative duties such as payment of salaries, pooja and ritual expenses and Annadhanam, as stated in G.O.Ms. 223 and nothing more.

11. I respectfully further submit that no servant of the HR & CE Department can become Trustees or Fit Persons of any Hindu Temples since they do not have the qualifications prescribed under Section 25-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

12. I respectfully state that the 2nd respondent has called for a Tender in R.C.No. 805/2020/Civil, dated 20.08.2020, which was published in The Hindu, English daily on 22.08.2020, calling for sealed tenders in the petition mentioned Temple for providing house-keeping service contract in the petition mentioned Hill Temple, Sub Temple, Sub Institutions, etc. I am filing the hard copy of the said news Daily Tender Advertisement, which is impugned. It is also stated in the Notice calling for Tender that completed Tender will be received up to 23.09.2020 and that a pre-bid meeting shall be held at the 2nd respondent's office on 14.09.2020. Such act which has been impugned could not be carried out by the 2nd respondent for more than one reason.

13. I respectfully submit that first, the 2nd respondent lacks the basic qualification (not having a law degree).for appointment as a Fit Person as directed in G.O. No. 223 cited above and secondly, he cannot hold the additional post as that of a Fit Person



for an indefinite period. The interim period of appointment cannot be in any case be longer than the very full term of the Board of Trustees which is a period of two years only. Therefore, the position of a Fit Person or a "Trustee in lieu of the Board of Trustees" is non-est in the eyes of law in this temple. Further, as per Rule 11 of the Collection of Income & The Incurring of Expenditure Rules framed under the 1959 Act, "No expenditure shall be incurred without the written order of the Trustee ...". Hence, the 2nd respondent lacks authority to call for Tenders. Even otherwise the Fit Person appointed under G.O. Ms. No, 223 cited above allows the Fit Person to incur only a very few basic expenses. The purpose of the impugned Tender and the expenses to follow are beyond the scope of the 2nd respondent's authority. It will not be out of place to mention here that huge amounts are being involved in the Tender and jobs it proposes to carry out.

14. I respectfully state that the 2nd respondent of the petition mentioned Temple cannot call for the impugned Tender or other similar Tenders or incur expenditure as a Fit Person for the following reasons: -

- a. The Fit Person appointed vide G.O. No. 223 had crossed not just the interim period for which he had been appointed as a fit person on 10.06.2011 but also the full term of a validly constituted Board of Trustees which is two years as per Section 47 of the 1959 Act. Thus, the incumbent Executive Officer or any other person holding the position of "Fit Person" in Pazhani Sri Dhandayuthapani Swamy Temple lacks legal authority to so to hold the said position of "Fit Person".
- b. The expenditure sought to be incurred through the impugned Tender is a very high expenditure and could be incurred only by validly appointed Trustees and in any case, it is not to be incurred by the interim Fit Person as stated in the G.O.Ms. No. 223 cited above and which clearly states that the appointment of the Fit Person is only to meet some essential expenses like pooja and ritual expenses, salaries and Annadhanam.

15. I respectfully state that the impugned Tender Notification was issued on 22.08.2020 and that the period for submitting Tenders is up to 23.09.2020 and further a pre-bid meeting is stated to be held in the office of the 2nd respondent on 14.09.2020. If, the said impugned Tender Notification is allowed to continue, I as a worshipper, will be put to irreparable loss. Since, the very appointment of the 2nd respondent as



Executive Officer and his holding on to the office of Fit Person being violative of the relevant provisions of the Act, the impugned Tender called for by him is beyond his authority. In these circumstances, I seek indulgence of this Hon'ble Court to pass suitable Orders to STAY all proceedings of the impugned Tender Notification.

16. I respectfully state that I am left with no other efficacious and/or alternate remedy in agitating the above issue than by invoking the Writ Jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India, for the following amongst other: -

GROUNDS

- A. The impugned Tender Notification is violative of the provisions of the Hindu Religious and Charitable Endowments Act, 1959.
- B. The impugned Tender Notice does not accord any reason as to why Tender relating to house-keeping services are called for. By calling for such tenders, a spiritual center is trying to be converted into a commercial and/or a corporate established, which is violative of rights of worshippers to do seva and other voluntary services. This is a violation of fundamental rights guaranteed under Articles 25, 26 and 29(1) of the Constitution of India.
- C. For the petition mentioned Temple, as per G.O. Ms. No. 223 dated 10.06.2011 only a Joint Commissioner/ Executive Officer could hold the post of the Fit Person and that too the said appointment being subject to the decision of the Hon'ble Supreme Court, in Dr. Subramanian Swamy & others vs. State of Tamil Nadu & others, reported in (2014) 5 SCC 75, the decision by a Constitutional Bench of Hon'ble Supreme Court of India in the Shirur Mutt Case (1954 AIR SC 282) and the dictum of a four Judge Bench of the Hon'ble Supreme Court of India in SDG Pandara Sannati Case (1965 AIR 1578) and a decision of the Division Bench of this Hon'ble Court in SDG Pandara Sannati vs State of Madras (1994 2 MLJ 313).
- D. The 2nd respondent does not have the basic qualification of possessing a valid law degree to be appointed as a Joint Commissioner cum Executive Officer in



the petition mentioned Temple. Hence, as per G.O. Ms. No. 223, the 2nd respondent lacks the basic qualification to be appointed as a Fit Person.

- E. The impugned Tender is being called by an officer of the Government and that the Government which is said to be secular, cannot be allowed to perform duties as official duties in respect of matters relating to spiritual aspects including sevas in the temple in cleaning the temple. In these circumstances, the impugned Tender Notice by passed by the 2nd respondent is violative of Part III of Constitution and is liable to be quashed.
- F. The impugned Tender Notice issued by the 2nd respondent is beyond the scope of his authority as provided under G.O. Ms. No. 223 and such works could be called for only by Trustees of a Temple.
- G. No efforts have been taken by the Government in appointing Trustees in the petition mentioned Temple. The Government has allowed the Fit Persons to continue for an indefinite period, thereby infringing the right of a worshipper.
- H. The concept of house-keeping is known only to corporate and other allied institutions. It does not have any nexus to Temples. In fact, house-keeping, with reference to Temples would mean to maintain the Temple premises and to keep it clean and tidy. It is the trite of Hindus that they volunteer to provide such services, which is popularly known as Uzhavara Pani (உழவார்ப் பணி). It is voluntary in nature and does not carry any charges. From the days of yore, the sevartis as of right have been involved in the said service. By entrusting such services with contractors will be a clear violation of the rights vested with the Uzhavara Paniyaalar. In fact, it will not be out of place to mention that if the contractors are being involved in such services, the same will be a burden to the financial aspects of the Temple and there would be possible issues relating to transparency of maintaining accounts. In these circumstances, the impugned Tender Notice is liable to be quashed.
- I. The petitioner reserves his rights to file additional grounds, if any, subject to obtaining leave of this Hon'ble Court.



17. I respectfully state that I have not filed any other writ or suit or initiated any proceedings before this Hon'ble Court or any other forum, seeking a similar relief that I have sought for in the present writ petition.

It is therefore humbly prayed that this Hon'ble Court may kindly please to DISPENSE WITH the production of certified copy of the impugned Tender Notice bearing R.C.No. 805/2020/Civil, dated 20.08.2020 on the file of the 2nd respondent and pass such further or other Orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render Justice.

It is therefore humbly prayed that this Hon'ble Court may kindly be pleased to STAY the operation of the impugned Tender Notice bearing R.C.No. 805/2020/Civil, dated 20.08.2020 on the file of the 2nd respondent and pass such further or other Orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render Justice.

It is therefore humbly prayed that this Hon'ble Court may kindly be pleased to issue a WRIT OF CERTIORARI or any other Writ in the nature of Certiorari calling for records pertaining to the impugned Tender Notice bearing R.C.No. 805/2020/Civil, dated 20.08.2020, on the file of the 2nd respondent and quash the same and pass such further or other Orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render Justice.

Solemnly affirmed at Chennai on this the 27th day of August, 2020 and he having signed his name in my presence.

Before Me

Notary



M. GOMATHI
Advocate & Notary Public
7/4 SOUNDARARAJAN STREET,
T. NAGAR, CHENNAI - 500 017.