

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:30.12.2020

PRONOUNCED ON: 18.02.2021

CORAM

THE HONOURABLE **MR. JUSTICE R.MAHADEVAN**  
AND

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

**W.P. No.20319 of 2020**

- 1 Indic Collective Trust  
5E Bharat Ganga Apartments. Mahalakshmi  
Nagar 4th Cross Street Adambakkam Chennai  
600088 Rep. by its President Mr.T.R.Ramesh.
- 2 T.R.Ramesh  
Flat 3 B Nataraj Apartments 17D Silva Road  
Mylapore Chennai 600 004. .. Petitioners

Vs

- 1 The State of Tamil Nadu  
Rep. by its Secretary Department of Tourism  
Culture and Religious Endowments Department  
Secretariat Fort St. George  
Chennai 600 009.
- 2 The Commissioner  
Hindu Religious and Charitable Endowments  
Department No.119 Mahatma Gandhi Road  
Nungambakkam. Chennai 600 034.
- 3 The Addl. Secretary to Government,  
Tourism Culture and Religious  
Endowments Department Secretariat  
Fort St. George Chennai 600 009. .. Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari, Calling for the records relating to G.O.(Ms) No.169 Tourism Culture and Religious Endowments (R.E.1-2) Department issued by the 1st and 3rd respondent dated 14/12/2020 and quash the same.

For Petitioner : Mr. Niranjan Rajagopalan  
For Respondents : Mr.S.R.Rajagopal,  
Additional Advocate General  
assisted by Mr.M.Karthikeyan  
Special Government Pleader

### **ORDER**

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

The petitioner is a registered Trust constituted with the laudable objects of propagating and protecting the ethos of Indian culture, tradition, human values, unity and brotherhood, providing for education, art and scientific endeavour, relief to victims of calamities including medical assistance, promotion of traditional medicine, welfare of the families of martyrs, preservation of heritage and dissemination of the teachings of saints and leaders, among other similar and related objectives.

2. The Trust is in existence since June 2017. The status of the Trust, as a troubleshooter of issues both social and otherwise, that concern and touch upon varied aspects of Indian society and economy, does not appear to be in dispute.

It has initiated litigation questioning and seeking the intervention of the Courts in India on varied issues ranging from the firecracker ban to the deportation of Rohingyas, to a challenge to Section 370 of the Constitution of India, the constitutional validity of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (HR & CE Act) and connected Rules among others.

3. A disclosure is made in regard to three writ petitions touching upon issues arising from the operation of the HR & CE Act, one, a challenge to the constitutionality of the enactment itself, the second, W.P. Nos.9867, 9872 and 9878 of 2020 questioning the powers of the officials of the HR&CE Department to deploy and administer funds of Hindu Religious Institutions in the absence of hereditary trustees duly appointed in terms of 25A of the Act and the third, W.P. No.19834 of 2012 filed by the Temple Worshippers Society, Chennai, a registered society, wherein Mr.T.R.Ramesh who has deposed to the affidavit filed in support of this writ petition in the capacity of President, also serves as President. That Writ Petition seeks a direction to the respondents to revive and update their official web-site ([www.hrce.tn.nic.com](http://www.hrce.tn.nic.com)) and the individual websites of prominent Hindu Temples by providing all mandatory information as per Section 4 of the Right to Information Act 2005. The last writ petition is presently being heard by one of us (Anita Sumanth J).

4. The present writ petition is styled as a Public Interest Litigation and prays for a Certiorari quashing Government Order in GO.MS No.169 Tourism,

Culture and Religious Endowments Department dated 14.12.2020 (impugned GO/GO) on the ground that it contravenes several Articles in the Constitution of India as well as the provisions of the Act.

5.The genesis of the impugned G.O. appears to be an initiative propelled by the Commissioner, HR&CE Department/R1 on 11.03.2020 suggesting the launch of a television channel to disseminate (religious) and spiritual programmes. This was followed by an announcement by the Hon'ble Chief Minister of Tamil Nadu on 24.03.2020 to the effect that a television channel under the name and style of Thirukoil T.V., with an estimated capital of Rs.8.77 crores is proposed to be launched in order to disseminate religious programmes. In addition, a deposit of Rs.20 crores is proposed to be made and the interest accruing therefrom utilized to meet recurring costs of operations.

6. After the announcement, a communication dated 03.06.2020 was circulated by R1 to the Additional Chief Secretary, setting out a comprehensive plan of action with relevant background material. The communication appears to be a vision document, and refers to a benediction bestowed by the Seer Saint of Tamil-Veda calling for a 'Spirit of Inquiry' into Wisdom Supreme. The narrative opens with a reference to Tirukkoil, a monthly publication by the HR&CE Department which completes its diamond jubilee in 2020, on Hindu Religion. An e-newsletter, it claims to be showcasing the cultural, religious,

linguistic and traditional values related to classical Tamil art, architecture, murals, heritage and temples in the State of Tamil Nadu.

7. According to the petitioner, the impugned GO contains several factual and other inaccuracies and does not adhere to the procedure set out in terms of Section 97, which deals with the creation of Hindu Religious and Charitable Endowments Common Good Fund (Fund) and the Rules framed under the Administration of Common Good Fund Rules, 1962 (Rules), specifically Rules 3 to 6 thereof.

8. It would be in order that the provisions of Section 97 of the Act and the Rules cited above are extracted:

**97. Creation of Hindu Religious and Charitable Endowments Common Good Fund.** - (1) *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 [buildings and paintings, for the promotion and propagation of tenants common to all or any class of religious institutions and for any of the purposes specified in subsection (1) of section 66].*

*[(1-A) [the Commissioner] may, on a direction from the Government, transfer to the said Fund, any surplus or such portion thereof, as may be specified in the direction, remaining in the [Tamil Nadu Hindu Religious and Charitable Endowments Administration Fund] after the repayment of the amounts specified in sub-section (2) of section 12 and sub-section (2) of section 96.]*

*(2) The said Fund shall be vested in, and administered by, [the Commissioner] in such manner as may be prescribed.*

**Administration of the Hindu Religious and Charitable Endowments Common Good Fund Rules, 1962**

**3. [Commissioner] to provisionally decide applications under sub-**

*section (1) of section 97. - On receipt of application for the purpose mentioned in sub-section (1) of section 97, the Commissioner may, after due consideration, provisionally decide the purposes for which the amounts requested or part thereof may be utilised. He shall have power also to modify his provisional decision after due enquiry.*

**4. Publication of notice inviting objections to grant aid.** - *A notice inviting objections or suggestions relating to his proposal to grant aid shall be published by affixture -*

*(a) on the notice board or the front door of the institution requiring aid; and*

*(b) on the notice board of the offices of the [Joint/Deputy Commissioner] and of the Assistant Commissioner having jurisdiction over the area in which the institution is situate.*

**5. Contents of the notice.** - *The notice referred to in rule 4 shall specify the date which should not be less than thirty days from the date of its publication, within which objections or suggestions may be sent. It shall also specify the date on which the enquiry will be held to consider the objections or suggestions.*

**[6. Final Orders.** - *After enquiry into the objections and suggestions, if any, and after due consideration, [the Commissioner] shall pass final orders. The order of [the Commissioner] shall be published in the same manner as the notice referred to in rule 4.]*

9. Section 97 provides for the creation of Fund by way of voluntary contributions from and out of the surplus funds of religious institutions apart from private contributions/donations. Section 97(2) specifies that the fund shall be administered in accordance with the prescription set out in the Rules and the Rules contemplate the procedure to be followed in the deployment of the funds by the Commissioner, HR & CE/R2, upon receipt of an application, stating the specific purpose for which the funds are sought. Thereafter, a period of 30 days is granted during when objections are invited on the proposed grant and an enquiry conducted on the basis of the application and objections received.

10. The above procedure, according to the petitioner, has not been followed in passing the impugned GO. Moreover, funds are sought to be allotted for the propagation of Hindu values and the history of temples in Tamil Nadu, contrary to the avowed objects of the fund.

11. The petitioner argues that the specific arrangement of Rules 3 to 6 are such that any application filed before the Commissioner seeking aid must be published, calling for objections or suggestions from the public, prior to accepting the same. In the present case, there has been no publication of the application or the proposal to grant aid which is in violation of the prescribed procedure. He draws attention to the provisions of Section 97(1) read with the aforesaid Rules stating that the fund has been created specifically for the purpose of renovation/preservation of needy temples and their properties or for the promotion or propagation of tenets that are common to all religious institutions or for the purposes specified in Section 66(1) of the Act. It is in furtherance of these objects alone, that the funds may be utilised.

12. A system of checks and balances has been built into the Rules to prevent misuse of the funds and it is for this reason that the Commissioner is called upon to publish his proposal for grant of funds, as a measure of ensuring transparency.

13. The petitioner would also point out that the statement in the impugned G.O. to the effect that the Deiveega Peravai building, Alwarpet,

Chennai assigned as the office and studio for the proposed channel belongs to the Kapaleeshwarar Temple, is erroneous and it belongs to a group of nine Mutts of Tamil Nadu. In response, learned Additional Advocate General appearing for the respondents confirms that the aforesaid building does belong to the Kapaleeshwarar Temple but was being used by the mutts for a period in between. It has since reverted back to the temple and there is thus no error in the statement to this effect.

14. Learned AAG defends the impugned G.O. as being in line with the statutory provisions as well as applicable Rules. He brings to our notice the fact that one, Periyambadi Narasimha Gopalan, had filed a Writ Petition in W.P.(MD) No.17274 of 2020 before the Madurai Bench of this Court seeking a direction to the respondents, the same as arrayed before this Court now, not to take any steps to launch Thirukoil T.V. as per announcement dated 24.04.2020, without appointing security personnel and temple staff on minimum/living wages in all temples under the control of the HR&CE Department.

15. The Bench considered the prayer and opined that the launch of the Thirukoil T.V. channel was as per the policy decision of the Government of Tamil Nadu and in line with the announcement made by the Hon'ble Chief Minister of Tamil Nadu to this effect and thus, no interference was called for. Moreover and as regards the appointments of Archakar and staff for other temples under the control of the HR&CE Department, that constituted a



different relief altogether and it was misconceived on the part of the petitioner to have sought to club that relief with relief concerning the launch of the television channel. In conclusion, they held that the launching of the dedicated channel should not be stalled and dismissed the writ petition.

16. This decision was distinguished by the petitioner who points out that the present writ petition challenges a G.O., issued post dismissal of that writ petition and turns on entirely different grounds. He specifically states that the policy behind the launch of the television channel is not in question. Thus, according to him, dismissal of W.P.(MD).No.17274 of 2020 does not impact the present writ petition in any way. We agree, and proceed to decide the matter on the grounds canvassed by the petitioner in this writ petition.

17. Vision document dated 03.06.2020 is illuminating. The first portion records temple activities, poojas and festivals and the proposal to telecast as well as archive the same. The Department expresses the view that the dissemination of spiritual and philosophical teachings as well as cultural, religious, linguistic and traditional values are paramount and the optimum method of dissemination was thought to be via television. Temples, not merely places of worship but centres of daily activity and life, are repositories of heritage and civilization and contain vast amounts of sculptures and paintings in their premises. The technical details of the proposed telecast, telecast planning and other features have been elaborated in detail in this document.

18. The impugned G.O. after taking note of the proposal and vision document has granted approval to the following:

*'3. Government, after carefully considering the proposal of the Commissioner of the Hindu Religious and Charitable Endowments Department, accepts it and in order to execute the announcement made by the Hon'ble Chief Minister in the Legislative Assembly under rule 110, orders according approval to the Commissioner of the Hindu Religious and Charitable Endowments Department as follows:*

*(i) To start Television by the name Thirukkoyil for the purpose of propagation of religious principles by the Hindu Religious and Charitable Endowments Department in location No.19/9, Maharaja Surya Street, Alwarpet in the Deiveega Peravai Building belonging to Sri Kapaliswarar Temple;*

*(ii) To design a sample logo in the name Thirukkoyil Television;*

*(iii) To undertake total expenses of Rs.8.77 Crores (Rupees Eight Crores and Seventy – seven lakhs only) from Commissioner's Common Good Fund for purchase of modern technical equipment and assemble a studio to start and run a new Television at an approximate estimated cost of Rs.6,27,00,000/- (Rupees Six Crores Twenty-seven lakhs only) as stated in Annexure -01 of this Order and Rs.2.50 Crores (Rupees Two Crores and Fifty Lakhs only) for licences to secure satellite connections which would enable Devotees throughout the world to see through satellite;*

*(iv) To create temporary work positions on consolidated monthly pay as stated in Annexure-02 of this Order to run Thirukkoyil Television in an eminent manner;*

*(v) Arrange Rs.20.00 Crores (Rupees Twenty Crores only) Deposit from Commissioner's Common Good Fund and utilise the probable quarterly interest therefrom to undertake regular working expenditure as stated in Annexure 03 of this Order for monthly consolidated pay to appointees, electricity charges, maintenance expenses of technical equipment, production of special programmes and stationery expenses;*

*(vi) To undertake the abovementioned regular expenditure mentioned above to the tune of Rs.30.00 lakhs (Rupees Thirty lakhs only) from the Commissioner's Common Good Fund during the first quarter when interest would not be obtained;*

*(vii) To start a separate bank account for Thirukkoyil Television to carry out the above monetary transactions;*

*(viii) To form an Advisory Committee as mentioned in Annexure-04 of this Order, which would formulate execution plans for program broadcasting in this Thirukkoyil Television and execute them;*

*(ix) To form a Thirukkoyil Television Broadcast Planning Committee as stated in Annexure -05 of this Order to undertake the work of serialising and making ready of the programs.'*

19. A co-ordinate Bench of this Court has recognised the position that the launch of the channel is a policy decision of the Government which brooks no interference and we express solidarity with this view. Additionally, the petitioner has also emphasised that what is questioned is not the policy, but non-adherence to the prescribed procedure.

20. We believe that this argument is misconceived and does not reflect a proper understanding of the provisions of Section 97 read with Section 66 and the applicable Rules. The object of Section 97 is to build a corpus (fund) to bear the expenses incurred towards enumerated purposes. The avowed objects are three pronged: (a) the renovation and preservation of needy temples and their properties and assets being one such purpose, (b) the promotion and propagation of tenets common to all religious institutions being another and (c) the varied religious, scholastic, charitable and artistic objects set out in Section 66, being the third. The corpus is itself formed only out of voluntary contributions from and out of surpluses generated by religious institutions or by voluntary donations. The Rules provided for a method to administer this fund.

21. Rule 3 provides for a decision by the Commissioner on an application received for funds, which is provisional. He is thereafter to publish the provisional decision inviting objections to the same. The publication is to be by way of affixture on the notice board or on the front door of the institution requesting aid as well as on the notice board of the offices of the HR & CE authorities having jurisdiction over the area where that institution is situated. This procedure needs to be followed, in our view, only in the case of applications received for the first limb, limb (a) of Section 97(1), being the renovation and preservation of needy temples and their assets. Our reasoning in this regard is set out below.

22. The State of Tamil Nadu has temples in excess of 44000 in number that are overseen and managed by the HR & CE Department. There is thus bound to be some amount of competition for the funds. One cannot also assume the authenticity of all applications requesting funds. The eligibility or otherwise of an institution to the funds sought, the purpose for which it is sought, the urgency expressed and the preference that should be accorded in selecting the beneficiary, is a matter of discretion to be exercised by the Commissioner. In exercising this discretion, he should be fully equipped with all material particulars and facts, and possessed of all information that would assist him in coming to a proper decision. This is vital if the deployment of funds is to be proper. It is for this purpose that the Rules require publication of the proposal,

in order that persons in possession of relevant factors might bring the same to the knowledge of the Commissioner.

23. As far as limbs (b) and (c) are concerned, that is, propagation and promotion of tenets universal to all religious institutions and the fulfilment of objects set out in Section 66, the requirements of publication and calling for public objections are not material as it would hardly prejudice one institution at the expense of the other.

24. The object of Section 66 is the appropriation of endowments. The appropriate authority, on recording satisfaction that the religious institution has not served its purpose or that its purpose has become impossible of realisation, may direct that its endowments be appropriated to certain enumerated objects or ends, such as (a) the grant of aid to another religious institution which is poor or in needy circumstances; (b) the grant of aid to any religious purpose connected with the Hindu religion; (c) the propagation of the religious tenets of the institution; (d) the recitation of DivyaPrabhandam, Thevaram and the like including the study of Indian languages for that purpose; (e) the establishment and maintenance of schools for the training of archakas, adyapakas, vedaparayanikas and othuvars; (f) the establishment and maintenance of a university or college or other institution in which the main features shall be the provision for the study of Hindu religion, philosophy or sastras or for imparting instruction in Hindu temple architecture; (g) the establishment and maintenance

of educational institutions where instruction in the Hindu religion is also provided; (h) promotion of fine arts and architecture; (i) the establishment and maintenance of orphanages for Hindu children; (j) the establishment and maintenance of asylums for persons suffering from leprosy; (k) the establishment and maintenance of poor homes for destitute, helpless and physically disabled persons; and (l) the establishment and maintenance of hospitals and dispensaries for the benefit of pilgrims.

25. The proviso after clause (l) above states that in the case of a religious institution founded and maintained by a religious denomination or any section thereof, the endowments shall, as far as possible, be utilised for the benefit of that denomination or concerned section alone. Thus the Act strives to maintain identity in the use of the funds by deploying funds appropriated from one type of religious institution to another of similar type, so far as it is possible.

26. The distinction we note in the three limbs of activities for which the fund can be utilised are that limb (a) deals with a single, identified beneficiary, limb (b) towards a universal purpose and limb (c), similar to limb (b), a set of universal purposes without a stipulated beneficiary.

27. Thus, we are of the considered view that the rigour of the procedure in Rules 3 to 6 would apply only in cases of deployment of the fund for limb (a) and not any other purpose. In line with this view, we dismiss this writ petition.

28. We could well stop at this point but proceed to pen a footnote with some observations on the proposed television channel. The following paragraphs do not, in any way, impact the order dismissing the writ petition, for which purpose one need read no further than paragraph 27 above.

29. The avowed object in setting up Thirukoil TV is to propagate the culture, ethos, spiritual and philosophical values represented and espoused by Temples. Temple history has its roots in the Vedas and a temple could well be represented by any living space where the presence of the Divine might be sensed and assimilated. However, it was in or around the 10<sup>th</sup> century AD that the Cholas codified temple architecture, definitively, and the magnificent temples at Darasuram, Thanjavur and GangaikondaCholapuram stand testimony to their contributions.

30. The philosophy surrounding a Temple, whether of the Nagara type of architecture, between the Himalaya and Vindhyas, the Dravida in the South of India or Vesara in the Deccan Region, has been studied by scholars over the years and in the two volume tome, 'The Hindu Temple' Stella Kramrisch explains its significance in detail, step by minute step.

31. In the preface, the author has this to say about the Hindu Temple:

*The structure of a Hindu temple is rooted in Vedic tradition, and primeval modes of building have contributed their shapes. The principles are given in the sacred books of India and the structural rules in the treatises on architecture. They are carried out in the shrines which still stand throughout the country and which were built in many varieties and styles over a millennium and a half from the fifth century A.D.*

*The purpose of the Hindu temple is shown by its form. It is the concrete symbol of Reintegration and coheres with the rhythm of the thought imaged in its carvings and laid out in its proportions. Their perfection is a celebration of all the rites enacted during the building of the temple from the ground to its pinnacle. Nothing that is seen on the temple is left unsaid in the verbal tradition nor is any of the detail arbitrary or superfluous. Each has a definite place and is part of the whole.*

*The Hindu temple is the sum total of architectural rites performed on the basis of its myth. The myth covers the ground and is the plan on which the structure is raised.*

32. There is a significance attached to every stage of temple construction, from the foundation to the finial. The selection of the site is done carefully concluding with the diagram of a Vastu Purusha, and a forecast of the temple is drawn on the selected area, constituting the foundation upon which the structure is built, the Vastu Purusha Mandala. This site has great implications and significance as it is considered locationally, both terrestrial and extra-terrestrial, constituting a marriage between heaven and earth, and where even a mere mortal can access a superior sense of being.

33. The architecture and the exact positioning of shrines and all temple structures are based on strict rules of Agama either Shaiva, Vaikanasam or Panacharaatram, which define temple tradition and protocols. The rhythm in the arrangement of the temple structure and the exactitude in proportions are intended to flow to the surroundings as well, the temple being the centre of life and activity in the surrounding village/town. The strict codification in architecture, ritual and symbolism are endowed with deep meaning and significance which, to our minds, commends the keen sense of inquiry and



study that the proposed television channel seeks to kindle. The ancient wealth of philosophy and spiritualism sought to be showcased and shared is universal, sans barriers and confines of religion and religious propensities and seeks only to elevate the quality of one's life. One hardly needs the dictates of religion to be peace loving, conceiving of no harm toward one's fellow beings.

34. The overarching presence of nature and the ability to live as one with it, are all that is required to keep alive such sentiment. This is best represented in the environs of a temple or place of worship, traditionally, set in the lap of nature. With the passage of time, places of worship are today, most often, in the midst of a concrete jungle. But, speaking from our collective experiences, there is a rush of peace and serenity when one enters a place of worship and this sentiment is universal, be it the grand Cathedrals in Europe, the Hagia Sophia in Turkey, a Byzantine era splendour that straddled the Christian and Islamic faiths over several centuries, a Hindu Temple or a Synagogue.

35. The concept of a television channel to disseminate spiritual enquiry, ancient but timeless teachings of seers, and the sthala purana of places of worship, is nothing novel and has been undertaken all over the world. We are no exception to this trend and the proposed television channel will, we fondly hope, effectively showcase the significant wealth of philosophy, spiritualism and culture that India is privy to. After all, borrowing from Thiruvallavar, what

is education, if unaccompanied by culture, learning and the ability to assimilate the ageless wisdom of the past:

கற்றதனால் ஆய பயனென்கொல் வாலறிவன்  
நற்றாள் தொழார் எனின்.

(R.M.D.,J) (A.S.M.,J)  
18.02.2021

Sl/ska

Index: Yes/No

Speaking/Non Speaking Order

To

- 1 The State of Tamil Nadu  
Rep. by its Secretary Department of Tourism  
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**R.MAHADEVAN,J.**  
**AND**  
**Dr.ANITA SUMANTH,J.**

Sl/ska

**Pre-delivery order in**  
**W.P. No.20319 of 2020**

**Dated: 18.02.2021**