

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

W.P. No.14256 of 2020

T R Ramesh
President – Indic Collective Trust
Flat 3B, Nataraj Apartments
17 D'Silva Road, Mylapore,
Chennai – 600 004.

... Petitioner

Versus

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 & Charitable
Endowments Department
119, Mahatma Gandhi Road,
Nungambakkam
Chennai – 600 034.

... Respondents

AFFIDAVIT OF THE PETITIONER

I, T. R. Ramesh, son of Dr. T.N. Ramachandran, Hindu, aged about 58 years, residing at Flat 3B, Nataraj Apartments, 17 D'Silva Road, Mylapore, Chennai –600004, do hereby solemnly affirm and sincerely state as follows:

1. I am the Petitioner herein and I am well acquainted with the facts and circumstances of the case and I am competent to swear to this affidavit.

2. I respectfully submit that, I am filing the present writ petition as a Public Interest Litigation under Article 226 of the Constitution of India praying for a Writ of Mandamus or any other appropriate Writ, Direction or Order directing the respondents to conduct the audit of Hindu Religious Institutions under the administrative control of the Hindu Religious and Charitable Endowments Department through qualified external auditors only, and where mandatorily required as concurrent audits and/or annual audits keeping in line with Section 87 (3) and (4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and as mandated to be carried out by Chartered Accountants in accordance with section 12A (b) read with Explanation below sub-section (2) of section 288 of Income Tax Act, 1961.
3. I respectfully submit that I am a permanent resident of Chennai, qualified Post-Graduate in Commerce, and was in the management of a Multi-National Bank. I am the President of Indic Collective Trust, Chennai which is a Trust with the object of preserving Indian values, ethos and culture. 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 Litigations for the purposes of: -
 - (a) protecting and maintaining temples, their traditions and their antique and heritage structures, statuaries and icons;

- (b) protection of movable and immovable properties of Hindu Temples and endowments - including statuaries and icons belonging to the temples and connected endowments; and
- (c) defending the fundamental, religious and cultural rights guaranteed by the Constitution of India to Citizens of India including Hindu Citizens under its Articles 25, 26 and 29(1).

I am also the President of Temple Worshippers Society, Chennai, a society registered under the Societies Registration Act, 1975. Currently there are few Public Interest Litigations filed by me as an individual, on behalf of Temple Worshippers Society and on behalf of Indic Collective Trust pending before this Hon'ble Court.

4. I submit that such number of public interest litigations on other HR&CE issues and currently pending before this Hon'ble Court are:
 - (a) 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 in this Writ Petition as the 1959 Act for brevity),
 - (b) Writ Petition in W.P. No. 17468 of 2016 challenging the Management and Preservation of Properties of Religious Institutions Rules framed under the said 1959 Act,
 - (c) Writ Petition in W.P. No. 6810 of 2018, questioning the authority of the officials of the Hindu Religious and Charitable Endowments Department (hereinafter referred to in this Writ Petition as the HR & CE Department for brevity) in conceiving,

deciding and carrying out core religious ceremonies in Hindu Temples including Temple Consecrations,

(d) Writ Petition in W.P. No. 32387 of 2019 challenging G.O. Ms. No. 318 and dated 30.08.2019 issued by Revenue and Disaster Management Department, are pending before this Hon'ble Court.

(e) Writ Petitions in W.P.Nos. 9869, 9872 and 9878 of 2020 questioning the transfer of Hindu Temple funds without the true Trustees of the temple present/appointed for the temple and without following the due process laid down under law for such transfers.

5. I state that I am filing this writ petition in as the president of Indic Collective Trust and out of funds of the Trust. The PAN of Indic Collective Trust is AABTI4756Q and my aadhar no is 258504529082.
6. I submit that I do not have any personal interest or agenda against the respondents, or any person concerned with the respondents. I hereby undertake to pay any cost that may be awarded if the above Writ Petition is found to be frivolous or without adequate basis. I have not filed any other petition on this issue and to the best of my knowledge, no litigation is pending on the issues agitated herein.
7. I further submit that the details contained in the affidavit are based on information collated out of my own research works and from the enquiries made with the concerned departments under Right to

Information Act, 2005 and from information provided by some devotees of temples in the State of Tamil Nadu.

I. Hindu Religious Institutions under the administrative control of the HR & CE Department:

8. I respectfully submit that there are 44,121 Hindu Temples and Endowments under the direct administrative control of the 2nd respondent, as claimed by the HR & CE Department in its official website viz., www.tnhrce.org. The 2nd respondent herein ostensibly derives his powers from the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to in this petition as the 1959 Act for brevity) and the Rules framed from time to time thereunder. As per the said Act, the following are the mandatory duties cast upon the 2nd respondent and his subordinates:

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- a. Preparation of Registers under Section 29 of the 1959 Act as soon as the management of the Hindu Religious Institutions are taken over by the 2nd respondent department, recording all particulars and properties of the said Institution;
- b. Prepare Registers under Section 30 of the 1959 Act, every year with respect to the additions and deletions of the properties of the respective Religious Institutions taken over by the 2nd respondent;

- c.** Consolidate all the registers that were prepared under Section 30, once in 10 years as per Section 31 of the Act;
- d.** Appoint Trustees having requisite qualifications under Section 25-A for Hindu Institutions having an annual income of less than Rs. 10,00,000/- (Rupees Ten Lakhs only) and not having hereditary Trustees, as per Section 47 and Section 49;
- e.** Conduct concurrent audits under Section 87(3) of the Act for the Hindu Religious Institutions having an annual of Rs. 5,00,000/- (Rupees Five Lakhs only), or more;
- f.** Conduct external audit under Section 87(4) for all Hindu Religious Institutions that has an annual income of more than Rs. 1,000/- (Rupees One Thousand only);
- g.** Under Section 23 of the Act, the 2nd respondent is accorded with control and supervisory powers to protect the properties of the Hindu Religious Institutions and realize the due income therefrom and further ensure that such income and other income are utilized for the purposes for which the Hindu Religious Institutions exist;
- h.** Resolve audit objections concerning the Hindu Religious Institutions under the administrative control of the 2nd respondent within 6 months from receiving the relevant audit reports;
- i.** Take such steps as necessary under Sections 78, 79, 79-B and 79-C to remove encroachments from the immovable properties of Hindu Religious Institutions including eviction of such

encroachers and recovery of moneys due to such Religious Institutions that are due from such immovable properties.

j. Preserve and maintain the temple structures and the images therein, including inscriptions, statuaries, icons and murals with great care and diligence.

k. Publish suo motu and other mandatory information under Section 4 of the Right to Information Act, 2005 in the website of the HR & CE Department and in the websites of the Temples under their administrative control.

II. Provisions relating to audit of Hindu Religious Institutions under the 1959 Act:

9. I respectfully submit that the conduct of audit of Hindu Religious Institutions that are under the administrative control of the Hindu Religious and Charitable Endowments Department (hereinafter referred to as the “HR & CE Department” in this Petition for brevity) is covered under Chapter VIII of the 1959 Act under Sections 87, 88, 89, 90 and 91 found therein. Further, “The Appointment of Auditors Rules” framed under the said 1959 Act vide G.O. Ms. No. 187 Commercial Taxes & Religious Endowments Department dated 18.02.1976 and “The Manner of Audit of Accounts Rules” amended by G.O. Ms. No.200, Commercial Taxes & Religious Endowments Department dated 30.05.1996 framed under the 1959 Act are the pertinent Rules relating to conduct of audit and the manner by which

such audits of Hindu Religious Institutions that are under the control of the HR & CE Department should take place.

10. I respectfully submit that Section 87 of the 1959 Act lays down the scope of the audit to be conducted and also regarding the auditors to be appointed in the prescribed manner. Section 87 of the 1959 Act is reproduced as follows:

Section 87 - Accounts and Audit

(1) The trustee of every religious institution shall keep regular accounts of all receipts and disbursement. Such accounts shall be kept for each fasli year separately and in such form and shall contain such particulars as may be specified by the Commissioner.

(2) The accounts of every religious institution shall be audited by auditors appointed in the prescribed manner and such auditors shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

(3) The accounts of every religious institution, the annual income of which as calculated for the purposes of section 92 for the fasli year, immediately preceding is not less than five lakhs rupees, shall be subject to concurrent audit, that is to say, the audit shall take place as and when the expenditure is incurred. The accounts of every other religious institution, the annual income of which calculated as aforesaid for the fasli year immediately preceding is not less than one thousand rupees, shall be audited annually,

or if the Commissioner so directs in any case or class of cases at shorter intervals.

(4) The accounts of any other religious institution, the annual income of which calculated as aforesaid for the fasliyear immediately preceding is less than one thousand rupees shall be audited departmentally and no fee shall be levied therefor.

(5) It shall be the duty of the trustee of the institution concerned and all officers and servants working under him, his agent and any person having concern in the administration of the institution, to produce before the auditors within such period as may be prescribed, all accounts, records, correspondence, plans and other documents and property and moneys relating to the institution to furnish them with such information as may be required, and to afford them all such assistance and facilities as may be necessary or reasonable and as may be required in regard to the audit of the accounts of the institution.

11. I respectfully submit that while the above-cited Section 87(2) of the 1959 Act says that every religious institution shall be audited by auditors appointed in the prescribed manner, I further submit that this provision should be read with Section 87(4) which clearly states that only those institutions that has an annual income of less than Rs.1000/- shall be audited departmentally i.e. internally by the department. Therefore, it follows that, it is only the appointment of external auditors that has to be prescribed in the Rules that are framed under Section 87(2) of the 1959 Act.

12. I submit that the 1st Respondent herein issued G.O. Ms. No. 187, Commercial Taxes and Religious Endowments, dated 18.02.1976 (hereinafter referred to as G.O. 187 in this petition for brevity) by which “the Appointment of Auditors Rules” currently in vogue were framed.

III. Illegality of the Rules framed for Internal Audit of Hindu Religious Institutions:

13. I respectfully submit that when this said G.O. Ms. No. 187 was issued by the Government there was no elected Government in the State of Tamil Nadu since the Government formed by the DMK Party was dismissed on 31.01.1976 by the Central Government using powers under Article 356 of the Constitution of India. Therefore, the said G.O. 187 was issued only during the Governor’s rule in Tamil Nadu on 18.02.1976.

14. I respectfully submit that under Section 116(3) of the 1959 Act, “all rules made and all notifications issued, under this Act shall, as soon as possible after they are made or issued, be placed on the table of the Legislative Assembly and shall be subject to such modifications by way of amendment or repeal as the Legislative Assembly may make either in the same session or in the next session.

15. I respectfully submit that stated in para 13 above, there was no elected government ruling the State of Tamil Nadu when the said G.O. 187

was issued. The next elected government came to power in Tamil Nadu only on 30.06.1977.

16. I respectfully submit that I had filed on 17.04.2018, an application to the Commissioner of HR & CE Department under the Right to Information (RTI) Act, 2005 seeking information about certain Rules framed under the 1959 Act including the “Appointment of Auditors Rules” and copies of proofs of placing on the table of Legislative Assembly the Rules so framed for Legislative approval as required under Section 116(3) of the 1959 Act.
17. I submit that by a communication dated 07.05.2018 the Public Information Officer (PIO) of the Office of the Commissioner of the HR & CE Department replied to my Right To Information (RTI) application dated 17.04.2018. In the said reply, the said PIO fairly conceded that for my queries regarding provisions for which Rules were necessarily to be framed under the 1959 Act were not framed at all. Further the PIO stated in her reply that no copies of the proof of tabling the Rules framed before the Legislative Assembly were available in the Office of Commissioner of the HR & CE Department, being the headquarters of the said Department.
18. I submit that Hon’ble Supreme Court of India in ***Dr. Subramanian Swamy & Others vs State of Tamil Nadu & others (2014 V SCC 75)*** has observed, inter-alia, the following:

“.....40. Section 116 of the Act 1959 enables the State Government to frame rules to carry out the purpose of the

*Act for “all matters expressly required or allowed by this Act to be **prescribed**”. Clause 3 thereof requires approval of the rules by the House of State Legislature.....”*

*“...43. Section 45 of the Act 1959 provides for appointment of an Executive Officer, subject to such conditions as may be **prescribed**. The term ‘prescribed’ has not been defined under the Act. Prescribed means prescribed by rules. If the word ‘prescribed’ has not been defined specifically, the same would mean to be prescribed in accordance with law and not otherwise. Therefore, a particular power can be exercised only if a specific enacting law or statutory rules have been framed for that purpose.”*

19. I respectfully submit that it is reasonable to assume that the “Appointment of Audit Rules” for which G.O. Ms. No. 187 Commercial Taxes and Religious Endowments Department and dated 18.02.1976 were not placed before the Legislative Assembly after the formation of an elected government on 30.06.1977.
20. I respectfully submit that, in any case, the constitutional validity of the “Appointment of Auditors Rules” framed under the 1959 Act has been challenged in W.P. 1432 of 2019 filed before Hon’ble Supreme Court of India along with certain other Provisions of the 1959 Act and certain Rules framed under the said 1959 Act by this Petitioner Trust and a few other petitioners. Hon’ble Supreme Court of India has issued notices to the 1st Respondent herein in this Writ Petition.

IV. External Audit of Religious Institutions mandated by Law; HR & CE Act, 1959 & Income Tax Act, 1961

21. I submit that be that as it may, even otherwise, audit of all religious institutions and charitable endowments under the control of Hindu Religious and Charitable Endowments Administration Department could not be carried out by a so-called independent audit-wing created in the Hindu Religious and Charitable Endowments Administration Department, which will be under the immediate control of a Chief Audit Officer and under the ultimate control of the 2nd Respondent herein viz., the Commissioner, Hindu Religious and Charitable Endowments Administration Department. Such an arrangement is blatantly violative of Section 87(4) of the 1959 Act which permits internal audit only for those institutions for which annual income is less than Rs.1000/-.
22. I submit that under Section 87(3) of the 1959 Act, the accounts of every religious institution, the annual income of which as calculated for the purposes of section 92 for the fasali year, immediately preceding is not less than five lakhs rupees, shall be subject to concurrent audit, that is to say, the audit shall take place as and when the expenditure is incurred. However, no concurrent audit takes place in such temples whose annual income is more than Rs. 5.00 lakhs or even in temples whose annual income is more than Rs. 1.00 Crore. This is a serious violation of a mandatory provision.

- 23.** I respectfully submit that as per section 12A of the Income-Tax Act, it is mandatory to get the accounts of entities including religious trusts registered under Section 12-A audited. If the receipts of the trust exceed Rs.2,50,000/- for the Assessment Year 2018-19 or after, it is to be audited by a Chartered Accountant and the trust should obtain a report from the said Chartered Accountant in form 10-B.
- 24.** I submit that most temples that have more than Rs. 2.00 lakhs annual income and which are under the control of the HR & CE Department have been registered under Section 12-A of the Income Tax Act, 1961. Vide communication R.C. No. 16774/2018/Z.1 dated 28.03.2018 the 2nd Respondent herein gave directions to all her subordinate officers in the HR & CE Department to get all temples registered under Section 12-AA of the Income Tax Act, 1961. She had further instructed to apply for such registration using form 10-B along with accounts for three financial years signed by the Executive Officer and a Chartered Accountant. The 2nd Respondent Commissioner had, in the said communication, further directed her subordinates to convert the accounting period from Fasali Years to financial years i.e. follow an accounting year that starts from 01st April and ends on 31st March of the subsequent year.
- 25.** I submit that while the purpose of the direction by the 2nd Respondent in the said communication dated 28.03.2018 was to get all temples registered under Section 12-AA of the Income Tax Act,

1961, the temples administered by the HR & CE Department and coming under the supervision and control of the 2nd Respondent are not conducting neither external audit as required under Section 87 of the TN HR & CE Act, 1959 nor an audit by a Chartered Accountant as required under Section 12A (b) read with Explanation below sub-section (2) of section 288 of Income Tax Act, 1961.

26. I submit that thus, the authorities under the TN HR & CE Act, 1959 including the 2nd Respondent herein violate not only Section 87 of the said 1959 Act but also violate the provisions of the Income Tax Act, 1961 by not conducting external audit by Chartered Accountant where the trust's (temple, mutt or endowment) income exceeds Rs. 2,50,000/- per annum.

V. Serious Deficiencies in the Departmental Audit carried out by the HR & CE Department

27. I submit that the following are the serious deficiencies in the Department Audit carried out by the Internal Audit Department of the HR & CE Department headed by a Chief Audit Officer who reports to the 2nd Respondent Commissioner:

A. Delayed Audit:

I submit that in many temples and other Hindu religious institutions that are under the control of the HR & CE Department, audit takes place many years after the closing of annual accounts. This defeats the

very purpose of audits and definitely the purpose of concurrent audits, a purpose mandated by law.

B. Not reporting Transactions carried out Executive Officers without any legal authority:

I submit that there are many transactions that are initiated by the Office of the Commissioner or by a Regional Joint Commissioner by which funds of Hindu Temples are transferred out of such Hindu Temples for non-Temple purposes and without following the due process laid down in the 1959 Act for transfer of funds. These instances are never highlighted by the internal auditors. Similarly, alienation of temple properties can be done only after following the due process laid down under Section 34 of the 1959 Act and after ensuring such alienation is necessary or beneficial for the temple concerned. These too are not covered by the internal auditors while auditing Hindu Temples. Amounts received from Donors towards Tiruppani works are never subject to audit. Similarly, there are schemes of administration framed by Courts of law or by the HR & CE Department itself and the temple administration would have to be carried out as per the scheme clauses. However, the internal audit team never points out the deviation from or non-compliance of the scheme clauses.

C. Absence of Trustees not recorded:

I submit that for about 19,000 temples non-hereditary trustees have not been appointed since 2011. This is a serious deficiency of non-compliance of mandatory provisions of the 1959 Act. Further, the appointment of servants of the HR & CE Department as Fit Persons for years together is violation of Section 25-A, Sections 47, 49 and the functioning of the Board of Trustee Rules. As per G.O. 223 Tamil Development, Religious Endowments and Information (R.E. 3.1) Department dated 10.06.2011 and G.O. 264 Tamil Development, Religious Endowments and Information (R.E.3.1) Department dated 11.07.2011 appointment of Fit Persons is only for an interim period and such Fit Persons can only be there to carry out the very essential activities of the temples viz., pooja expenses, festivals, annadhanam and staff salaries. They cannot carry out other transactions. These too are not pointed out by the internal auditors. The interim period for which a Fit Person can be appointed is proscribed to 90 days by Proviso to Rule 2(2) of the Functioning of the Board of Trustees Rules framed under the TN HR & CE Act, 1959. This too is not taken into cognisance by the internal auditors of the HR & CE Department. These are fundamental flaws with which the internal audits are carried out.

D. Violations of Rules framed under HR&CE Act, 1959 are not reported:

I submit that the internal audit of Hindu Temples, Mutts and Endowments by the audit team HR & CE Department does not carry out checks whether the Rules framed under the HR & CE Act, 1959 are

followed by the Trustees or authorities administering such temples, Mutts or endowments. For example, none of the audit reports cover aspects like:

- i. whether the mandatory monthly meetings of Board of Trustees took place;
- ii. whether there exists any valid order of appointment of Executive Officer made for the religious institution concerned and by which authority the Executive Officer is functioning in the institution;
- iii. whether motor vehicles bought in the name of the religious institution is being utilised by someone else and whether the vehicle logs show misuse of the vehicles;
- iv. whether due process laid down in the 1959 Act have been followed while transferring funds of the religious institutions;
- v. whether such funds transfers are voluntary and made only by the true trustees and not by any authority of the HR & CE Department;
- vi. whether the contribution to Commissioner's Common Good Fund was made only by trustees of a religious institution and that too only voluntarily;
- vii. whether any expenses of the HR & CE Department or Government have been made from the funds of Hindu Temples or endowments;
- viii. whether it is only the Trustees who have made proposals, called for tenders, acceptance of tenders, awarding of contracts,

obtaining supplies, etc. and whether only the Trustees or Board of Trustees carry out all civil works in Hindu Religious Institutions as required under The Preservation and Maintenance of Properties of Religious Institutions Rules framed under the HR & CE Act, 1959;

- ix. whether it is only the trustees who have submitted Demand, Collection and Balance statement, Statement regarding value of tools, Abstract of receipts and expenditure, fasali administration report under The Submission of Budgets, Deposits, Accounts, Returns or Other Information Rules framed under the TN HR & CE Act, 1959 or such statements have been submitted at all to the authorities concerned;
- x. Whether the scheme provisions have been duly followed and/or complied with for temples for which schemes of administration have been framed by Courts of Law or by the authorities under the HR & CE Act, 1959
- xi. Whether it is only the Trustees who have recruited temporary or permanent staff and office-holders in Hindu Religious Institutions and whether regularisation of such temporary office-holders or staff are done only by the Trustees of such Hindu Religious Institutions and not by HR & CE Department officials or government.
- xii. Whether it is only the Board of qualified Trustees from Hindu citizens which has made valid proposals concerning alienation of Hindu Temple and Endowment properties and whether such

proposals have been made only in the interest of the Temples and Endowments concerned.

xiii. Whether the true and/or potential income for the landed properties of the Hindu Institutions are realised and whether such properties are free of encroachments and/or hostile occupation and whether there are valid lease agreements between the religious institutions and the occupants of such landed properties

28. I submit that there are many such incidents that clearly show that the internal audit conducted by the HR& CE Department is not only violative of the law laid down in Section 87 of the 1959 Act but also highly deficient and ineffective and serves no real purpose.

29. I submit that the Assistant Audit Officer and the Public Information Officer (PIO) of the Office of the Chief Audit Officer in the HR& CE Department, in a reply dated 16.06.2017 to my RTI application, the said PIO informed the following:

- (i) “...It is informed that the forms and other matters of the audit department have not yet been computerized
- (ii) *The audits of all the senior grade temples for Fasli-1424 have been completed. The audits of Fasli-1425 are under progress.*
- (iii) *There is no exclusive Audit Manual. The audits are carried out as per HR&CE Act 1959 provisions and the Manual of Accounts.*

(iv) *Audits have been completed for other temples up to Fasali 1423....”*

30. I submit that from the above, it is clear that the internal audit Department of the HR & CE Department is functioning without even an audit manual which is to be followed by the internal auditors. Further, as of 2017, the forms and other matters relating to audit have not been computerized. Audit for the completed Fasali year i.e. 01.07.2015 to 30.06.2016 are only in progress and not completed as on 16.06.2017 which is almost a year from the completion of the Fasali year for Senior Grade Temples. For other temples which are not Senior Grade Temples, (*temples that have an annual income of Rs. 1 Crore or above are classified as Senior Grade Temples even though there is nothing in the TN HR & CE Act, 1959 that permits such classification*) annual audits for the period up to 30.06.2014 only have been completed.

31. I submit that by a reply dated 30.05.2018 to my RTI application dated 09.06.2017 the Public Information Officer of the Officer of the Chief Audit Officer conceded that as on that date, completion of annual audits and sending the audit reports to the Appropriate Authority were pending for many mutts that were having more than Rs.10.00 lakhs as annual income and for many temples, that were having more than Rs. 1.00 Crore as annual income by 3 to 6 years.

32. I submit that for Sri Thiagarajaswamy Temple, Tiruvarur town and District audit for fasali years 1413 to 1421 was carried out at one go from 16.11.2012 to 30.03.2013 i.e. after more 9 years of gap. The internal auditors have sighted a lot of instances of mismanagement and misappropriation of funds including expenditure for the nine year period being carried out without any budgetary approvals, non-production of property registers, property registers not prepared for 60 years, However, this internal audit miserably failed to record the following among other major lapses:

a. That the continuation of the control of HR & CE Department in Sri Thiagarajaswamy Temple ended on 10.02.1965 by an order of the Hon'ble Supreme Court and that the Executive Officer is functioning in the said Temple without any legal authority

b. That about 32 acres of land - which is primarily a water body known as *Sengazhuneer Odai* - and belonging to the temple has been completely encroached for many years.

c. That, during the audit period, lands to the extent of 293 acres belonging to two endowments of the temple, viz., Abhisheka Kattalai and Rajan Kattalai have been alienated by officials of the HR & CE Department to Central University Tiruvarur without following the due process laid down for alienation of land under Section 34 of the 1959 Act and the Rules framed thereunder and without following the earlier Government Orders and guidelines issued concerning alienation of lands belonging to temples.

Thus, this is yet another example that would show that the internal audit by auditors of the HR & CE Department is highly deficient, inadequate and does not cover the most important aspects of management and maintenance of a public religious institution.

33. I submit that delays in audit like this are a very serious violations since, besides the palpable delay in carrying out the audits, no external audit is done for these and similarly placed Religious Institutions and no concurrent audits are carried out as required by the 1959 Act. However, the HR & CE Department unfailingly charges 4% of the Income of such Hindu Religious Institutions as audit fees. A very large audit fees of 4% of the income is unheard of in any institution. Further, the HR & CE Department in many cases charges this 4% audit fees even before the audit begins or completed. Further, in India, certain professionals like auditors / CA's and Lawyers cannot charge contingent fee. Therefore, in this count also, fixing 4% on the income is wrong and the government is violating its own law.

VI. Highly Deficient Standards of Audit:

34. I submit that the standards of accounts i.e. accounting standards and formats applicable for Trusts - Indian Government Accounting Standards (IGAS) are not followed in Temples under the control of the HR & CE Department. More importantly, Indian Government Financial Reporting Standards (IGFRS) are required to be followed by those who audit such Hindu Temples and other endowments.

There cannot be exceptions in this. If, on the other hand, had any other person committed the errors and violations that is being committed by HR&CE Department, he would have been penalized and prosecuted severely by the authorities in Government in the manner known to law. Under the guise of administration by a government department, these violations are being committed continuously without remorse or correction. The following are the serious deficiencies in the standards of audit and reporting done by the internal audit coming under HR & CE Department itself:

a. Lack of Independence:

- The HR & CE Internal Auditors are employees of the same HRCE Department, whose affairs and books of accounts are being audited by them, whereas ideally in respect of a large public body such as group of Tamil Nadu Hindu Temples the auditors should not be its employees.

b. Objective of Audit:

- i. The objective of conducting audit is to verify and report to the stake holders of the public body as to whether the assets are protected, due income are earned and expenses have been properly spent and accounted.
- ii. The stake holders of Hindu Temples, viz., Hindu devotees of the Temples do not have access to the audit reports as they are not in the public domain. There is no transparency whatsoever.

- iii. Even if a Hindu devotee or a stakeholder like the Trustees or a person belonging to the Sampradaya of the Temple or the locality where the temple is situate, through Right to Information (RTI) Act, 2005 (*currently all requests under RTI Act seeking audit reports are rejected by the Public Information Officers of the HR & CE Department including the Public Information Officer of the Office of the Chief Audit Officer*) accesses the audit report, he cannot seek resolution of serious audit objections found therein unless through recourse in Court of law. Stake holders of a large public body can seek clarification for the audit objections in General Body meeting. Hindu devotees of Hindu Temples are denied of this fundamental right unless they are ready to embark on long and winding legal process.
- iv. Most internal audit reports submitted to Commissioner and Joint Commissioners though may appear to cover the objectives of whether the assets are protected, due income are earned and expenses have been properly spent and accounted in reality the objectives are not achieved in most audit reports it is reported that the auditors are not provided with all supporting documents, registers and records for their verification. Further there have no updating of Property Registers mandatorily required under Sections 30 and 31 of the 1959 Act.
- v. Objective of audit cannot be said to be effectively achieved if annual audits are not conducted on a scheduled basis. Audits of Hindu

Religious Institutions under the HR & CE Department are conducted irregularly and with definite delays and in many cases with two or three years of audit being conducted together at one go after missing to conduct annual audit.

- vi. Submission of audit reports are many times delayed after the conduct of these delayed and improperly scheduled audits.

c. Quality of audits and effectiveness of audits:

- i. Checking of internal controls which is the basic of auditing norms is not carried out and hence not reported
- ii. In many audit reports, in respect of audit verification of lease income, the following remarks have been reported:
 - 1. improper maintenance of demand registers such as non-recording or mention of property address/survey no., name of lessees;
 - 2. non reconciliation of age-wise break up of outstanding;
 - 3. non availability of lease documents;
 - 4. Non-inclusion of many landed properties in the demand register, not properly explained. In other words, no adequate explanation have been furnished to them why no lease income is demanded and accounted for those endowed properties;
 - 5. Such being the case, the amount of receivables from leases / auctions etc. reported by the auditors in the main audit report and in the schedules annexed to the audits do not carry any

authenticity and are in fact unreliable in the context of true income realisable from such endowed properties.

- iii. In view of the above, the category-wise demand summary, giving opening balance, demand, collection and closing balances submitted as annexures to the audit report do not carry any authenticity.
- iv. Many audit objections which are repeated over several years are in respect of chronic failures on the part of the Joint Commissioners in pursuing encroachment/alienation and the audit reports being submitted to the very same Joint Commissioner makes no sense.
- v. In most audit reports, particularly of those temples and endowments which are under the control of the HR & CE Department for 30 years or more, the audit objections remaining unresolved are quite large in number and value. These audit objections are shown as pending resolution for more than 30 years. Thus, the very purpose of audit is not served when audit objections for several years remain unresolved.
- vi. Portion of audit report pertaining to audit objections is not structured. Audit objections are reported on various subjects in any sequence. Omission to cover certain areas may go unnoticed and will defeat the purpose of audit.

V. Post-audit imperfect reporting of Audit Reports and non-resolution of audit objections:

35. I submit that under Section 90 of the 1959 Act, The Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, shall send a copy of every audit report relating to the accounts of a religious institution to the trustee thereof, and it shall be the duty of such trustee to remedy any defects or irregularities pointed out by the auditor and report the same to the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be.
36. I submit that however, the regional audit officer after sending the audit report for the Hindu Temple concerned to the authorities mentioned in Section 90(1) also sends a copy directly to the Executive Officer functioning in the said Hindu Temple and not to the Trustee of the Institution. This, it is submitted, is the first among the many violations in the audit procedures that take place in Hindu Temples after completion of audit. The regional audit officer while sending the audit report makes a request to the Executive Officer who receives the audit report to (a) acknowledge the receipt of the report and (b) prepare a para wise reply to the audit objections in duplicate and send them to the appropriate authority mentioned in the said Section 90(1) and one to the regional audit office.
37. I submit that Government passed G.O. Ms. No. 557 Commercial Taxes and Religious Endowments Department dated 08.04.1988. In the said G.O. Government had, among other directions, issued

directions that the receipt of the Audit Report should be acknowledged immediately and the 2nd Respondent to pass final orders on settlement of audit objections and the audit report should be closed within 6 months.

- 38.** I submit that the para-wise replies are never sent to the regional audit officials even after completion of 2 years of audit and receipt of audit report. In the first place, no Trustees have been appointed for about 19,000 temples for which non-hereditary trustees have to be appointed. In other temples where Hereditary Trustees or Scheme Trustees are present, audit reports are not provided to them. The 1959 Act provides for rectification of errors sighted in the audit reports and provides for orders of surcharge against Trustees only under Section 90 of the said Act. Thus, the Executive Officers who are in actual control and administration of each Hindu Institution go scot free on this mere technical ground.
- 39.** I submit that as on 31.03.2016, a humungous number of more than 1.3 million audit objections are pending resolution (13,81,178 paras). And these audit objections are pending from the year 1986. This situation is reprehensible and scandalous since many of the officials against whom the audit objections were raised have since retired with some of them also having met with their natural death. HR & CE Department has a system of “Joint Sitting” by which audit objections are discussed within the department and many of are dropped after getting approval from the Commissioner. This, it is humbly

submitted, is against the process laid down in Section 90 of the 1959 Act dealing with “Rectification of defects disclosed in the Audit and order of Surcharge against Trustees, etc.” or under any clauses laid down in “ the Manner of Conduct of Audit Rules” framed under the said 1959 Act. The HR & CE Department is thus following a process not authorised by law to close the audit objections internally without being answerable to the Hindu Communities or even the true trustees of the Hindu Religious Institutions.

40. I submit that a perusal of the decisions taken in such Joint Sitting Meetings show that many of the audit objections made by the internal auditors are dropped from the audit reports without there being any justifications for doing so and without there being any legal authority or due process under the 1959 Act or the Rules framed thereunder to so drop the audit objections including serious objections from the audit reports finalised by the internal auditors and reported only to HR & CE Officials.
41. I submit that dropping of audit objections by the Regional Joint Commissioner and the auditors or even by the Commissioner of the HR & CE Department are not authorised under the 1959 Act or under any of the Rules framed thereunder regarding audit of accounts of Hindu Religious Institutions. Thus, thousands of irregular and unauthorised transactions are carried out by the officials of the HR & CE Department in the guise of internal audit and further in the guise of “settlement of audit objections.”

42. I submit that there is no transparency in the manner of conduct of audit of Hindu Religious Institutions or in the publication of the audit reports of such institutions. World over, it is a common and avowed practice for Charity and Trust Institutions to publish their audited accounts and audit reports especially when their income is mainly from public contributions.
43. I submit that while hundreds of thousands of Hindu devotees contribute to temples under the control of the HR & CE Department by way of hundi contributions, donations and other fees, the Respondents herein have not cared to publish the accounts and audit reports of such Hindu Temples ever either on their own or as required under Section 4 of the Right to Information Act, 2005.
44. I submit that the Public Information Officers officials of the HR & CE Department including the 2nd Respondent herein take extraordinary but deplorable efforts to somehow deny copies of audit reports to those who apply for such copies of audit reports under the Right to Information Act, 2005. I submit that by an order dated 20.10.2016 passed in **Case Nos.SA-5339, 5340, 5639,5640,5641 and 5673 /SCIC/ 2016** the State Chief Information Commissioner rejected the contention of the HR & CE Officials that the Audit Reports are incomplete documents and do not come under the classification of "Information". The Chief Information Commissioner passed an Order (inter-alia) directing the Public Information Officers of the HR & CE Department to provide copies of audit reports to RTI applicants.
45. I submit that even after the said order of the State Chief Information Commissioner, the Public Authorities in the HR & CE Department continue to deny production of audit reports by citing

totally unsustainable reasons which are more often bizarre and bordering on the ridiculous. I further submit that my complaint to the 2nd Respondent regarding such unlawful denial of audit reports was met with total silence. This shows that there is much to hide by the respondents herein regarding the financial irregularities conducted in the Hindu Temples administered by them and their subordinates.

46. In these circumstances, as I am left with no other alternate and equally efficacious remedy, I am constrained to approach this Hon'ble Court by way of this Writ Petition under Article 226 of the Constitution of India for the following among other

Grounds

- A. The Respondent has purposefully avoided the mandatory auditing with respect to concurrent audits of religious institutions under section 87 (3) of HR & CE Act and thereby blatantly and knowingly violated the law.
- B. The Respondent has purposefully avoided the mandatory auditing with respect to annual audits of religious institutions having annual income of more than one thousand rupees under section 87 (3) of HR & CE Act and thereby blatantly and knowingly violated the law. While the Respondent claims to be the guardians of Hindu Religious Institutions, the guardian himself is ignoring the authority of law and there by violated the famous legal maxim of "no man is above the law" or "law is above the king".

- C. The proposal of the Government and the Respondent to charge 4% for auditing the Religious Institutions under HR & CE Act is a blatant violation of section 87 (4) of HR&CE Act, which specifically bars levying or charging the fee for auditing by the Respondents.
- D. That the law is very clear that as per Income Tax Act, 1961 the accounts of religious institutions must be audited by the qualified chartered accountants only as per section 12A (b) read with Explanation below sub-section (2) of section 288 of Income Tax Act, 1961. The action of the Respondents in not auditing the accounts of the religious institutions in accordance with both section 87 of HR & CE Act and section 12A (b) read with Explanation below sub-section (2) of section 288 of Income Tax Act, 1961.
- E. That the action of Respondents in appointing non – audit background departmental officials for concurrent auditing of the temple accounts is just an eye wash and a mockery of law and justice.
- F. That it is well settled that when a power is given by a statute to do a particular thing in a particular manner, the thing shall be done only in that manner or not at all. When section 87 of the Act 1959 and 12A (b) read with Explanation below sub-section (2) of section 288 of Income Tax Act, 1961 of Income Tax Act, 1961 set out procedures for auditing of temples, the way the Respondents auditing the temples are in violation to the laws.
- G. That an action by the Government ostensibly for public cause cannot upset or take away an established public Cause namely Hindu

Religious and Charitable Purposes especially when that right to the Public cause is a fundamental right under Articles 25, 26 and 29(1).

- H. That it is a bad precedent for the law maker to violate its own law and the law that of central government. The government cannot punish the violator on the one hand and violate its own law on the other hand. While the Respondent claims to be the guardians of Hindu Religious Institutions, the guardian himself is ignoring the authority of law and there by violated the famous legal maxim of “no man is above the law” or “law is above the king”.
- I. That the dis honesty and lack of accountability of the Respondent is ostensibly clear from their actions of not addressing 1.30 million (One crore 30 lakhs) audit objections from the year 1986, which requires the strict implementation of section 87 (3) and 87(4) of HR&CE Act through the Chartered Accountants. If only it were a private persons, the law, government mechanism and the judiciary would not be flexible as they are flexible to the Respondent in all these years.
- J. That as the departmental officials are directed to audit the accounts of religious institutions, the violations and utilization of funds of religious institutions for illegal and unapproved purposes by the superior officials have been hidden out and never been objected in the audit reports.

K. That even if the departmental officials as auditors report any objections, they are dropped without any justification by the Respondents.

Interim Prayer:

47. It is therefore respectfully prayed that this Hon'ble Court may be pleased to issue a direction directing the 2nd respondent to conduct a special audit by independent chartered accountants as defined in Explanation below sub-section (2) of section 288 of Income Tax Act, 1961 for the past 5 financial years covering the properties, income, expenditure, maintenance of records, registers, appointment of employees, salaries, utilisation of temple funds for non-temple purposes in the following temples 1. Sri Kapliswarar Temple, Mylapore, Chennai, 2. Sri Ranganathaswamy Temple, Srirangam, Tiruchirapalli 3. Sri Arunachaleswarar Temple, Tiruvannamalai, 4. Sri Ramanathaswamy Temple, Rameswaram, 5. Sri Subramaniaswamy Temple, Tiruchendur, 6. Sri Dhandayuthapani Swamy Temple, Pazhani and 7. Meenakshiamman Temple, Madurai and 8. Sukavaneswarar Temple, Salem by a team of Chartered Accountants whose names are placed before this Hon'ble Court for selection by the Institute of Chartered Accountants – Southern India Regional Council of ICAI to conduct the audit in accordance with Income Tax Act, 1961 and submit their Report within 6 months and pass such any other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Prayer:

48. It is therefore humbly prayed that this Hon'ble Court may kindly be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or Direction in the nature of a Writ of Mandamus directing the Respondents to (i) conduct concurrent audits by independent firm of chartered accountants in accordance with section 12A (b) read with Explanation below sub-section (2) of section 288 of Income Tax Act, 1961 in all the temples having an annual income of Rs. 5.00 lakhs or more as required under Section 87(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (ii) conduct annual audit by independent firm of chartered accountant in accordance with section 12A (b) read with Explanation below sub-section (2) of section 288 of Income Tax Act, 1961 in all temples having an annual income of Rs.1000/- or more as per section 87 (3) and pass such any other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Chennai this
day of September 2020 and affixed
his signature in my presence.

Before Me

Advocate, Chennai