

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

(Special Original Jurisdiction)

**W.P. No.**

**of 2022**

T.R. Ramesh, aged about 59 years,  
S/o. Dr. T.N. Ramachandran  
Flat 3B, Nataraj Apartments,  
17, D'Silva Road,  
Mylapore, Chennai - 600004

...Petitioner

Vs

1. The State of Tamil Nadu  
Represented by Principal Secretary  
Tourism, Culture and Religious  
Endowments Department,  
Secretariat, Fort St. George,  
Chennai – 600 009.
2. The Commissioner,  
Hindu Religious and Charitable Endowments  
Department, Nungambakkam High Road,  
Chennai – 600 034.

Respondents.

**AFFIDAVIT OF MR. T.R. RAMESH**

I, T.R. Ramesh, son of Dr. T.N. Ramachandran, Hindu, aged about 59 years, residing at Flat 3B, Nataraj 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. This Writ Petition is for a Writ of Mandamus directing the Respondents to remove the Executive Officers illegally present in the Petition mentioned Temples

without any Order of appointment and further to appoint Hereditary or Non-Hereditary Trustees to the said Temples, as the case may be and to handover the administration of the same to the said Hereditary or Non-Hereditary Trustees or communities or Sampradayas of the said Temple from whose hands the administration was taken over by the Hindu Religious and Charitable Endowments Department together with all the properties acquired by it.

2. I respectfully submit that I have filed this instant writ petition as a Public Interest Litigation and that this PIL is filed using my own funds. I respectfully submit that I have no personal interest in the case. I respectfully submit that I undertake to pay the costs imposed by the Hon'ble Court if this Writ Petition is found to be frivolous or vexatious. I respectfully submit that to the best of my knowledge, I have not filed any Public Interest Litigation praying for such reliefs before any Court or legal forum and there are no similar Petitions pending before this Hon'ble Court.
3. I respectfully submit that I am an income tax assessee, and my Permanent Account Number is AEPPR4560K and my AADHAAR number is 2585 0452 9082. I state that my annual income is about Rs. 4,00,000/- (Rupees four lakhs only). I am a permanent resident of Chennai. I respectfully submit that I am a postgraduate in Commerce and was formerly in the management of a multi-national bank.
4. I am the President of two organizations, namely, the Indic Collective Trust and the Temple Worshippers Society. These two organisations have been (a) espousing the cause of Hindu temples and their heritage structures, (b) striving to ensure their clean and efficient administration by creating public awareness, (c) carrying out research and filing of Writ Petitions including Public Interest



Litigations for the cause of protecting and maintaining Hindu temples of yore, among other public causes concerning Indic Civilization values.

5. Accordingly, I submit that I am a person having interest as contemplated under Section 6(15) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 as I am a person who is entitled to worship the Petition Temples and have been offering worship regularly. Hence, I not only have an individual standing, but also a statutory standing, to maintain the present Writ Petition, seeking directions pertaining to the Petition mentioned Temples. Further, the Madurai Bench of this Hon'ble Court, in a Writ Petition filed by me in W.P.No. 10903 of 2020, has categorically held that I am person having interest and that as a worshipper, I am entitled to insist that the affairs of the Temple are conducted in accordance with the provisions of the Act.
6. I respectfully submit that I have filed a number of Public Interest Litigations on Issues of Heritage, Culture and Temple protection and proper Administration. They are as follows:
  - a. W.P. No. 14256 of 2020: Filed as President of Indic Collective Trust praying for a Writ of Mandamus directing the Government and the Hindu Religious Endowments Department to conduct only external audit as required under law for the Hindu Religious Institutions under the administrative control of the Hindu Religious and Charitable Endowments Department. The matter is pending before this Hon'ble Court.



- b. W.P. No 13502 of 2020, challenging the Presence of Executive Officers in about 70 Temples without any legally sustainable orders of appointment ever made for such temples for more than 50 Years. The matter is pending before this Hon'ble Court.
- c. W.P. Nos. 9869, 9872 and 9878 of 2020: Filed as President of the Indic Collective Trust challenging the illegal transfer of funds from Hindu Temples by the 2nd Respondent herein. This Hon'ble Court was pleased to grant an order of stay of such transfer of funds in the aforesaid Petitions.
- d. W.P. Nos. 32698 of 2019: Challenging, G.O. No.318 of 2019, the taking over lands belonging to Hindu Temples and Endowments and giving them to encroachers in such lands. This Hon'ble court was pleased to grant an interim stay order against the Government Order in respect of Hindu Temple and Endowment Lands.
- e. W.P. No. 2290 of 2017: Challenging Conditions for appointment of Executive Officers. This Hon'ble Court was pleased to dismiss the said petition. These Rules are now challenged before Hon'ble Supreme Court of India by Indic Collective Trust in Writ Petition 1432 of 2019 along with many provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
- f. W.P. No. 17468 of 2016: Challenging Preservation and Maintenance of Religious Institution Rules. This Hon'ble Court was pleased to dismiss





the Writ Petition with suggestions to the Tamil Nadu Government to amend the said Rules keeping with the times.

- g. W.P. Nos. 25429 to 25433 of 2015: Challenging the presence of Executive Officers in five temples. Disposed of as Rules were framed albeit with retrospective effect. The Hon'ble Supreme Court was pleased to observe in the Special Leave Petition filed against this common order that

*“...it appears to us that the High Court has not considered it on merits, whether the Rules are retrospective or not, as there is no consideration on merits of the submissions in the impugned order...”*

The Hon'ble Supreme Court was pleased to permit this Petitioner to file review petitions before the Hon'ble Division Bench of Madras High Court. The said review petitions are pending before this Hon'ble Court.

- h. W.P. Nos. 11412 and 11413 of 2015: As Secretary-General of the Temple Worshipers Society: Challenging the appointment of servants of HR&CE Department as “Fit Persons” (Super Trustees) of Hindu Temples. These Writ Petitions are pending adjudication before this Hon'ble Court.
- i. As President of the Temple Worshippers Society, I have filed a PIL W.P. No. 21906 of 2021, challenging the vires of the T.N. Hindu Religious



and Charitable Endowments Employees (Conditions of Service) Rule 2020, the Hon'ble First Bench of this Hon'ble Court was pleased to order notice and pass an interim order in the matter.

- j. I have also filed a PIL, W.P. 23070 of 2021 challenging the Foreign Service Deployment of members of the HR&CE Department in various temples, which is in clear violation of the HR&CE Act, 1959 and this Hon'ble Court was pleased to dismiss the said Writ Petition on 21.02.2022 while recording in the said order that the Government Servants placed on foreign service would revert to their parent departments or the departments concerned would pass appropriate orders for them, but, in any case, they will not be continued in same manner indefinitely.
- k. W.P. Nos. 22916, 22921 and 22926 of 2021, filed as President of the Indic Collective Trust and also as the 2<sup>nd</sup> petitioner, I have filed a PIL challenging the announcements made concerning Hindu Temple, their funds and properties by the Hon'ble Minister of Hindu Religious and Charitable Endowments Department in the Legislative Assembly including melting of gold in Temples by the Respondents herein as devoid of any legal authority and are in violation of fundamental rights guaranteed under Articles 25, 26 and 29(1) of the Constitution of India. The Hon'ble Court was pleased to stay the melting of Temple Gold and



have further given the liberty to this Petitioner to approach this Hon'ble Court if there any exigencies by its interim order dated 28.10.2021.

1. W.P. Nos. 24156 of 2021, in my individual capacity challenging the opening of colleges using the funds of Religious Institutions without following the provisions of the Hindu Religious and Charitable Endowments Act, 1959. This Hon'ble Court was pleased to issue an order of interim stay forbearing the Respondents herein from opening 6 Colleges using temple funds by its order dated 15.11.2021.

m. W.P. No. 3371 of 2022, in my capacity as the President of the Indic Collective Trust had filed a PIL praying for a writ of mandamus directing the respondents to recall the executive officers appointed under Section 45 of the TN HR&CE Act, 1959 in about 18 temples where the appointments were made between the year 1966 and 2008 as the said Executive Officers were functioning beyond a period of five years. This Hon'ble Court had dismissed the said writ petition on the ground that it was hit by laches and was filed by a delay of 10-12 years.

## **II. The 1959 Act vests the Administration in the Trustees only:**

7. I respectfully submit that the administration of Hindu Religious Institutions is primarily carried out by Hereditary Trustees or Trustees appointed in accordance with the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter the "1959 Act"). The 1959 Act is the governing legislation pertaining to the administration of Hindu Religious Institutions in



the State. The 1959 Act came into force from 01.01.1960 and was passed “to amend and consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu”. The Act has been assented by the President of India. The scheme of the 1959 Act is to indubitably vest the administration of the Hindu Religious and Charitable Institutions in the hands of Trustees only. The 1959 Act is a regulating Act and it is incorrect and against the fundamental rights guaranteed by the Constitution of India vide Articles 25, 26, 29(1) to say that the Hindu Temples numbering 44,000 or more are under the “control” of the HR&CE Department which is the limb of the State Government.

### **III. The Appointment of Executive Officers to Hindu Religious Institutions:**

8. I respectfully submit that the scheme of the 1959 Act contemplates the appointment of executive officers by the 2<sup>nd</sup> Respondent Commissioner only when there are instances of maladministration, illegalities and mismanagement in the affairs of Religious Institutions by the Trustees of the Temple. Directions of this Hon’ble Court and the Hon’ble Supreme Court of India have been issued to ensure that the 2<sup>nd</sup> Respondent Commissioner follows the principle of natural justice, conducts a proper enquiry, make out a case warranting appointment of a Government Executive Officer for the limited purpose of curing the instances of mismanagement proven to have taken place and make every such appointment for a prescribed limited period only.





9. I respectfully submit, that the 2<sup>nd</sup> Respondent Commissioner with the connivance and complete knowledge of the 1<sup>st</sup> Respondent herein has placed Executive Officers in Hindu Religious Institutions, for decades together and allow them to continue in office through these following illegal means:

a. Notified Temples:

Executive Officers appointed for Temples “notified” under Chapter VI-A of the erstwhile Madras Hindu Religious Endowments Act, 1926 (hereinafter referred to as the 1926 Act) continue to function despite such Notifications having been struck down along with the entire set of provisions relating to notification of Religious Institutions in Chapter VI-A of the said 1926 Act and Chapter VI of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as the “1951 Act”) in cases reported in 1952 1 MLJ 557 and in 1952 2 MLJ 481 and the said striking down was confirmed by a Constitutional Bench of the Hon’ble Supreme Court of India vide its order reported in AIR 1954 SC 282 of the landmark Shirur Mutt Case relating to Mutts and by a Constitutional Bench by its order in Civil Appeal No. 39 of 1953 by its order dated 09.02.1954 with regard to Hindu Temples.

b. SCHEME TEMPLES:

Though only the Commissioner has the powers to appoint Executive Officers under the 1959 Act, and no Executive Officers could be appointed while framing or modifying a scheme of administration under



Section 64 of the said 1959 Act, Deputy Commissioners/Joint Commissioners by way of framing Schemes or in the guise of modifying existing schemes of administration for Hindu Temples have mooted appointment of executive officers, and Executive Officers started functioning in such scheme temples without any valid orders of appointments ever made by the 2<sup>nd</sup> Respondent herein subsequent to such framing or modifications of schemes of administration.

c. Executive Officers appointed under Section 45 of the 1959 Act:

Executive Officers appointed by the 2<sup>nd</sup> Respondent Commissioner under Section 45 of the 1959 Act but where the appointments were made without making any case for such appointments and without prescribing the periods for which such appointments were made.

d. Executive Officers functioning without any orders of appointment:

Servants of the HR&CE Department functioning as “Executive Officers” in 100s of temples without any appointment of such Executive Officers ever made to such temples by an appropriate appointing authority under any of the enabling provisions under 1959 Act or the earlier 1951 Act or 1926 Act.

**IV. Writ Petition No. 3371 of 2022**

10. I respectfully submit that as already stated above, I have preferred another PIL before this Hon’ble Court in W.P. No. 3371 of 2022, praying for a writ of mandamus for a direction to the Respondents to recall all Executive Officers



who are functioning without valid appointment orders, without valid reasons for their appointment or appointed under Section 43-A or 45 or have been appointed before the Conditions for Appointment of Executive Officers Rules, 2015 was notified and order handover of the temples to the trustees/communities/sampradhayas (or their descendants) from whose hands the temples were taken over by the authorities in the Hindu Religious and Charitable Endowments Department. However, the said PIL was dismissed by this Hon'ble Court on the ground of laches. However, I am filing the present Writ Petition seeking appointment of Hereditary or Non-Hereditary Trustees. In this regard, I submit that by way of the instant Writ Petition, I am seeking a direction seeking removal of Executive Officers illegally existing in the Petition mentioned Temples.

**V. This Petitioner's Writ Petition No. 13502 of 2020**

11. I respectfully submit that the first two illegalities mentioned above are the subject matter of my earlier W.P. No. 13502 of 2020, currently pending before this Hon'ble Court. The scope of the instant writ petition is limited only to the functioning of executive officers without any valid order of appointment ever made and traceable. Executive Officers could be appointed only under Section 45 of the 1959 Act or Sections 43-A or 74 of the 1959 Act. In any event, no appointments of Executive Officers to Temples, claimed to have been made under the 1951 Act, could have survived since all the provisions that enabled appointment of Executive Officers to Hindu Temples, viz., Sections 56, 58 and 66 of the 1951 Act, were all struck down by the afore-cited orders of an Hon'ble



Division Bench of this Hon'ble Court dated 13.12.1951 and reported in 1952 I MLJ 557 and 1952 II MLJ 481. The appeals made against these orders pertaining to Chidambaram Sri Sabhanayagar Temple (1952 I MLJ 557) vide Civil Appeal 39 of 1953 and to Sri Venkatramana Devaru Temple of Mulkipettah (1952 II MLJ 481) vide Civil Appeal 15 of 1953 were also dismissed by Constitutional Benches of the Hon'ble Supreme Court of India.

**VI. Revelations from RTI Information and Notice Issued to Respondents:**

12. I respectfully submit that in this background I had learnt that Executive Officers were present in 100s of Temples across the state and in order to understand the circumstances which led to their appointment, the powers assigned to the Executive Officers and their period of appointment, I filed a series of RTI Applications seeking copies of the Orders of appointment of Executive Officers made for the very first time for individual temples. I was shocked to receive replies initially for about 32 Temples stating that the said Orders of appointment of Executive Officers were not available.

13. On further enquiry with erstwhile Trustees of various Temples, devotees and other persons involved in the affairs of Temples, I further learnt that orders of appointment for various Temples were never made for many Hindu Temples and that the "Executive Officers" were and are functioning in such temples without any authority of law, whatsoever. I came to know that there is a set pattern in these illegal presence of Government Executive Officers in Hindu Temples with the Respondents herein and their predecessors allowed such





presence only through fraud and deception and in brazen violation of the fundamental rights guaranteed under the Constitution of India, provisions of the 1959 Act, principles of equity and natural justice and violation and brazen and willful contempt of the dicta of the Hon'ble Constitutional Benches of the Hon'ble Supreme Court of India.

14. I respectfully submit that in these circumstances, I had sent a notice dated 15.01.2021 to Government of Tamil Nadu and the Commissioner, HR&CE Department, the Respondents herein, calling upon them to recall all such Executive Officers where no orders for the appointments under Section 45 or other enabling provisions under the 1959 Act or the earlier Acts were traceable and consequently restore the Temples back to the communities or Hereditary Trustees from whose hands the administration was taken over.

15. I respectfully submit that through research and analysis of information obtained under Right to Information Act, 2005 it was clearly established that there were **NO** orders of appointment of Executive Officers, traceable, for the following Hindu Temples and I had mentioned them in my notice dated 15.01.2021:

S. No.	Name of Temple	Location/JC Region	Date of RTI Communication
01.	Sri Chaturanga Vallaba Natha Swamy Temple	Poovanur/ Thanjavur JC	05.01.2021
02.	Sri Nelli Vananathaswamy Temple	Tirunellikaval/ Thanjavur JC	05.01.2021
03.	Sri Gnanapuriswarar Temple	Tirumakkottai/ Thanjavur JC	05.01.2021

04.	Sri Koneswarar Temple	Tirukudavasal/ Thanjavur JC	05.01.2021
05.	Sri Pasupatheeswarar Temple	Aavoor / Thanjavur JC	05.01.2021
06.	Sri Satchinathaswamy Temple	Avalivalnallur / Thanjavur JC	05.01.2021
07.	Sri Rathnapuriswarar Temple	Nattiyathankudi Thanjavur JC	05.01.2021
08.	Sri Naganathaswamy Temple	Pamani / Thanjavur JC	05.01.2021
09.	Sri Kailasanathaswamy Temple	Mannargudi/ Thanjavur JC	05.01.2021
10.	Sri Annamalainatha Swamy Temple	Mannargudi/ Thanjavur JC	05.01.2021
11.	Sri Vilvanathiswarar Temple	Tiruvallam, Katpadi/ Vellore JC	29.06.2020
12.	Sri Bhuvanathanatha Swamy Temple	Srimushnam/ Villupuram JC	20.06.2020
13.	Sri Subramaniaswamy Temple	Gangeyanallur/ Vellore JC	03.07.2020
14.	Sri Margabantheeswarar Temple	Virinjipuram/ Vellore JC	01.07.2020
15.	Sri Mariamman Temple	Samayapuram / Tiruchirapalli District	05.08.20 18 27.03.2019 12.03.2020
16.	Sri Bharatwajeswarar Temple	Kodambakkam / Chennai JC	19.11.2020
17.	Sri Magudeswara Swamy & Sri Veerananarayana Perumal	Kodumudi / Coimbatore JC	02.12.2020
18.	Sri Mariamman, Sri Kaliyamman , Sri Muniappan Temple	Guhai / Salem JC	28.11.2020
19.	Sri Sarngapani Temple	Kumbakonam / Mayiladuthurai JC	19.11.2020
20.	Sri Kothandarama Swamy Temple	Ayothyapattanam / Salem JC	14.12.2020
21.	Sri Sellandiamman Temple	Perundururai / Coimbatore JC	04.12.2020



22.	Sri Thrisoolanathar Temple	Trisulam / Chennai JC	01.09.2020
23.	Sri Kailasanathaswamy Temple	Thingaloor / Thanjavut JC	09.09.2020
24.	Sri Swaminathaswamy Temple	Swamimalai/ JC Mayiladuthurai	08.10.2018
25.	Sri Gangadareswarar Temple	Purasawalkkam / Chennai JC	28.10.2020
26.	Sri Ekambareswarar Temple	Mint / Chennai JC	23.10.2020
27.	Sri Kasi Viswanathaswamy Temple	Tenkasi/ JC Tenkasi	17.10.2020
28.	Sri Thenupuriswarar Temple	Madambakkam / Chennai JC	04.11.2020
29.	Sri Kachaliswarar Temple	Aranamanaikaran st./ Chennai JC	28.10.2020
30.	Sri Devanatha Perumal Temple	Chettypunyam/ Vellore JC	20.10.2020
31.	Sri Vedagiriswarar Temple	Tirukkazhukkundram /Vellore JC	21.10.2020
32.	Sri Nemelli Alawantar Trust	Mamallapuram / Vellore JC	19.10.2020
33.	Sri Bannari Amman Temple	Bannari/Erode	27.02.2012
34.	Sri Kariyamanica Perumal Temple	Tirunelveli	07.10.2020
35.	Sri Angalamman Temple	Melmalaiyanur	10.11.2020
36.	Sri Vaidyanathaswamy Temple	Cuddalore JC	03.04.2017
37.	Arl. Jambukeshawar Temple	Thiruchirapalli	25.09.2017
38.	Sri Panchavarneswarar Temple	Thiruchi	15.09.2019
39.	Vadapazhani Andavar	Vadapazhani	22.06.2012
40.	Sri Devi Karumariamman Temple	Thiruverkadu	03.08.2012
41.	Sri Ranganatha Perumal Temple	Tiruneermalai	01.09.2020
42.	Sri Thayumanaswamy Temple	Tiruchirapalli	14.08.2021
43.	Sri Sangamaheswarar Temple	Erode	30.05.2018
44.	Sri Lakshmi Narasimhaswamy Temple	Sholingur/Ranipet	23.09.2020





45.	Sri Mutharamman Temple	Tuticorin	11.09.2017
46.	Pambalangaraswamy Koil	Erode	30.11.2020
47.	Sri Subramaniaswamy Temple	Maruthamalai	08.04.2014

#### **VI. Impugned Communication from the 2<sup>nd</sup> Respondent:**

16. I respectfully submit that I had received a reply from the office of the 2<sup>nd</sup> Respondent Commissioner vide R.C. No. 3337/2021/L5 dated 01.02.2021, stating that since appointments were made over 30 years ago, the records were not traceable as order numbers and other details were not known. The letter also stated that the search was still in progress in the record rooms and that the requisite information would be given once they are available. At this juncture, it is pertinent to point out that the Respondents did not mention about the timeline within which they would trace the Orders of appointment of Executive Officers to various Temples. It is quite unreasonable that such servants would control the administration of the subject Temples without any specific time period. I humbly submit that the Respondents cannot illegally permit their servants to exist in Temples without period of operation of appointment. While so, it is also quite regressive that such servants existing illegally would be performing administrative functions perpetually that has been assigned to the Trustees as per the Act, taking shelter under the Orders that are not traceable today. The said response is undeniably against the fundamental rights guaranteed under Part III of the Constitution of India.





17. I respectfully submit that since I did not receive any additional response regarding the traceability of the Orders, I once again, on 01.06.2021, sent a reminder representation to the Respondents, calling upon them to withdraw the Executive Officers in the absence of any Order for their appointment. I brought to the attention of the Respondents herein in the said reminder notice that currently (at the time of reminder notice) there are details of 111 temples for which RTI and other information revealed that there are no orders of appointment of Executive Officers ever made for them. The very next day, I received a reply through email from the 2<sup>nd</sup> Respondent Commissioner vide R.C. No. 42809/2021-1 N-2 dated 02.06.2021 (hereinafter the “impugned communication”). The brief position given the 2<sup>nd</sup> Respondent Commissioner can be summarized as follows:

- a. The “non-availability of records” does not mean that the Executive Officers are functioning without valid orders of appointment.
- b. That the appointments of Executive Officers were made either as per the scheme settled for Temples or deemed to have been settled under the provisions of the Act.
- c. Executive Officers appointed before the Conditions for appointment of executive officers Rules, 2015 (hereinafter the “2015 Rules”) coming into force were given protection under the said 2015 Rules.



d. That the 2015 Rules were challenged before this Hon'ble Court in W.P. No. 2290 of 2017, which came to be dismissed and therefore the 2015 Rules are good in law.

18. I respectfully submit that the reply email by the 2<sup>nd</sup> Respondent is flawed on multiple grounds. An Executive Officer is appointed by the Commissioner under Section 45, in the case of Religious Institutions other than *maths* and under Section 43-A in Temples under *maths*. As per S. 45, the Commissioner may appoint, subject to such conditions as may be prescribed, an Executive Officer of a Religious Institution. The Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner, provided that only such powers and duties as appertain to the administration of the properties of the religious institution shall be assigned to the executive officer. The Commissioner may also suspend, remove or dismiss the Executive Officer.

19. The Hon'ble Supreme Court in *Dr Subramanian Swamy vs. State of Tamil Nadu* reported in **(2014) 5 SCC 75**, categorically stated that the Court has come to the conclusion that the power under 1959 Act for appointment of Executive Officer could not have exercised in the absence of prescription of circumstances/conditions in which such appointment could have been made. Subsequent to said judgment of Hon'ble Supreme Court, and after this I filed 5 Writ Petitions challenging the presence of Government Executive Officers in 5 different Hindu Temples before this Hon'ble Court, Government framed



“the Conditions for Appointment of Executive Officers Rules, 2015”  
(hereinafter the “2015 Rules”) which were notified on 06.11.2015.

20. I respectfully submit that it is therefore evident that the executive officer does not play a role of merely assisting the Trustees but has been given very wide powers under the Conditions of Appointment of Executive Officers Rules, 2015 cited supra with regard to the administration and control of the activities of a religious institution, albeit in stark violation of Proviso to Section 45(2) of the 1959 Act, which states that only those powers that appertain to the properties of the Religious Institution can be given to the Executive Officers.

21. Further, the Hon’ble Supreme Court of India has also held that such orders appointing Executive Officers to Temples are expropriatory orders which infringe fundamental rights of their citizens. Their period of operation of these orders has to be reasonably fixed to be coterminous with the removal of the consequences of the instances of maladministration. With this being the position, an executive officer who is an appointee of the State ought to be appointed only by a valid order stating reasons warranting such an appointment and remain in the said role only for a specific period or until the evil is cured for which purpose alone the Executive Officer can be appointed.

22. The absence of valid grounds for appointment of executive officers and their perpetual presence is therefore a direct infringement on the Fundamental Rights of devotees and religious denominations guaranteed under Articles 25 and 26 of the Constitution and also a contemptuous violation of the dictum of a

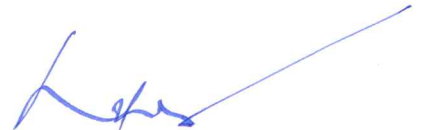


Constitution Bench of Hon'ble Supreme Court laid down in the SDG Pandara Sannati Case (AIR 1965 SC 1683). I respectfully submit that it was in this background I had issued the above-mentioned notices dated 15.01.2021 and 01.06.2021 to the Respondents.

**IX. Dicta of Hon'ble Supreme Court of India Regarding Appointment of Executive Officers:**

23. I respectfully submit that the Hon'ble Supreme Court in the landmark judgment of *Dr Subramanian Swamy* cited supra has laid down the following conditions for appointment of executive officers:

- a. The order of appointment of the Executive Officers must disclose reasons and under what circumstances the appointment was necessitated;
- b. The order must prescribe the period of operation, in the absence of which the order shall not be sustainable;
- c. The management of the Temples ought to be handed over to the persons concerned immediately after the evil stands remedied; and
- d. Such expropriatory order requires to be considered strictly as it infringes the fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period.





24. I respectfully submit that the Communication of the 2<sup>nd</sup> Respondent suffers from various legal infirmities and non-application of mind. The Communication begs the question as to whether any appointments of Executive Officers were made in the first place to the temples concerned and if they were appointed, what were the circumstances warranting their appointments and what were the periods of operation for each of these orders of appointments. Without advertng to the said issues, the 2<sup>nd</sup> Respondent only admits to the brazen illegal presence of the Executive Officers in the subject Temples and the glaring subterfuges that have been sustaining their illegal presence.

25. I respectfully submit that as discussed earlier in this Affidavit, the executive officers must be appointed only in the circumstances of proven maladministration or serious mismanagement and the same must be set out in the order of appointment. Without such a mandatory disclosure, it is impossible to know any evil ever existed that ought to be remedied and if it did, whether such an evil has been remedied.

26. I respectfully submit that as is evident from the judgment of the Constitutional Bench of the Hon'ble Supreme Court in SDG Pandara Sannati Case and in Dr. Subramanian Swamy vs. State of Tamil Nadu, the period of appointment should also be defined. Therefore, the absence of such an appointment order, where the reasons and/or period are not mentioned, for whatever reason, renders the appointment of executive officers ex-facie, arbitrary, illegal and unjust and renders all such Executive Officers as persons non-est in the eyes of law.



27. I respectfully submit that the 2<sup>nd</sup> Respondent Commissioner in paragraph 3 of the impugned communication has stated that for an Executive Officer appointed prior to the 2015 Rules coming into force, the requirement of a fixed period of five years would not apply as such an appointment would be saved by Rule 10, which reads as follows:

“10. (1) Nothing contained in these rules shall adversely affect the powers of the Executive Officer, who has been holding the post immediately before the date of the commencement of these rules.

(2) The powers of the Commissioner under these rules shall be in addition to, and without prejudice, to the rights and powers of the Commissioner under section 74 of the Act”

28. I respectfully submit that it is necessary to highlight that despite the Orders of the Hon’ble Supreme Court that the appointment of Executive Officers cannot be made in perpetuity, the 2<sup>nd</sup> Respondent has admitted that by referring to Rule 10 of the 2015 Rules, the HR&CE Department has sought to adopt a circuitous and legally unsustainable method to ensure the appointment of Executive Officers in perpetuity. The action of the Respondents is an act of colourable exercise of power whereby the 2<sup>nd</sup> Respondent has sought to do indirectly, what he cannot do directly, and it is a settled proposition of law that such an act is a fraud played on the Constitution.

29. I respectfully submit that in any event, the 2015 Rules cannot have any retrospective operation or for that matter save any action carried out in the past. Section 116 of the 1959 Act does not grant the Government any powers to make Rules with retrospective effect either expressly or by necessary implication.



There is no shred of retrospective power in the Sections that enable appointment of Executive Officers in the 1959 Act viz., Sections 43-A, 45 and 74.

30. I respectfully submit that the interpretation that the 2015 Rules cast a retrospective savings on the powers and functioning of the Executive Officers appointed before the 2015 Rules does not hold water as such a power adversely affects the Fundamental Rights of Trustees and persons interested in the Temples and that in any case, the 1959 Act nowhere grants the Government the power to make rules with retrospective effect.

31. I respectfully submit that while an Hon'ble Division Bench of this Hon'ble Court was pleased to dismiss Writ Petition No. 2290 of 2017 which challenged the Conditions for Appointment of Executive Officers Rules, 2015, the said Division Bench in its order dated 31.01.2017 **did not uphold or validate the presence of Executive Officers who were functioning the in the temples before the issuance and notification of the said Rules.** The Hon'ble Division Bench dealt with each clause of the said Rules, however, it only mentioned that clause 10 of the said Rules provides for continuation of the Executive Officers who were holding the posts on the dated of the Rules coming into force. The exact words used by the Hon'ble Division Bench in the said order is reproduced below:

*“....With regard to the challenge to Rule 10, we notice that Rule 10 provides for Executive Officers who are holding office on the date of coming into force of the impugned Rules, to continue to so function...”*



Hence, the response by the 2<sup>nd</sup> Respondent is completely misplaced when he replied in the impugned communication stating that the Hon'ble Division Bench of this Hon'ble Court upheld the said Rule 10(a) that provided for the continuation of the Executive Officers who were functioning in the Hindu Temples before issuance and notification of the "Conditions For Appointment of Executive Officers Rules, 2015". In fact, the word "retrospective" does not find a mention in the entire 21 page order dated 31.01.2017 of the Hon'ble Division Bench. It is reiterated that the Hon'ble Division Bench did not uphold the claimed retrospective nature of Rule 10(a) of the Conditions for Appointment of Executive Officers Rules, 2015.

32. I respectfully submit for the sake of brevity that while Rule 10(1) of the 2015 Rules may claim that nothing contained in the Rules shall adversely affect the powers of the Executive Officer holding the post before the commencement of the Rules but it would be rendered invalid as the said Rule is against

- a. Articles 25, 26 and 29(1) of the Constitution of India
- b. Is patently against the 'limited period' enshrined in Article 31-A(1)(b) of the Constitution of India
- c. Is against Section 107 of the 1959 Act
- d. Is a violation of the law declared by the Hon'ble Supreme Court of India regarding appointment of Executive Officers to Hindu Religious Institutions and consequently would be hit by Article 141
- e. The presence of Executive Officers in Hindu Temples and Endowments without any valid orders of their appointments is a fraud on the





Constitution and the provisions of the 1959 Act and a subordinate legislation cannot seek to ratify a fraud.

**X. Presence of Executive Officers in Hindu Temples and Endowments without any valid orders is a fraud on the Constitution and the 1959 Statute:**

33. I respectfully submit that in the absence of the appointment orders for executive officers or, as the Respondents claim, are “not traceable”, their presence in the Hindu Temples as “Executive Officers” is ex facie arbitrary, illegal and unjust and therefore these illegally present Executive Officers ought to be removed from their posts and the administration be handed over to the true Trustees or descendants thereof of the Temples from whose hands the administration belonging to the respective Sampradhayas i.e. religious denomination of the temples were taken over.

34. I respectfully submit that it is preposterous to state that the appointment orders are not available either with the respondents or with the executive officer. All the more shocking and unfortunate is the fact that the orders are systematically missing in more than two hundred temples.

35. I respectfully submit that the non-availability of these orders appointing executive officers in hundreds of Temples is not a mere clerical omission but is part of a broader scientific design to somehow exercise control of Hindu Temples and that too primarily by resorting to illegal methods and flagrantly sheepish stratagems. The takeover of the Hindu Temples is carried out predominantly to maintain the HR&CE Department and pay the personnel



therein at the cost of the Hindu temples. The 1<sup>st</sup> Respondent who was charging 3% of the income of the temples in the year 1951 is now charging 12% of the income of the temples. This it is, humbly reiterated, is bankrolling of the HR&CE Department through Hindu Temple Funds, pure and simple and without any legal basis whatsoever to do so. Doing this without any legal authority and in perpetuity is an indirect ruse by the Government to levy tax on the income of the Hindu Temples besides wresting the administration of such temples from the hands of Hindu Citizens. I respectfully submit that in many instances it was found that executive officers of temples are also functioning as “fit persons” of such Hindu Temples and I have challenged the same in a different writ petitions.

**XI. Mismanagement by the Illegally present Executive Officers:**

36. I respectfully submit that the illegal and fraudulent presence of “Executive Officers” of the HR&CE Department for many decades in the Hindu Temples and Endowments without any legally sustainable orders of appointment of such Executive Officers has also proved to be highly detrimental to the welfare and proper management of these temples and endowments apart from the following:

- a. Their callous attitude and the greed for awarding civil contracts to sundry civil contractors who have no sense or idea about temple heritage and antiquity have wreaked havoc on the extraordinary heritage and aesthetic value of ancient temples of Tamil Nadu and in many cases the damages are irreversible.



- b. The instrumentalities of the HR&CE Department by fraudulently doubling up as “Fit Persons” of the Hindu Temples, i.e. as the Sole Trustees of the temples have seriously interfered in the religious aspects of the temples and have taken decisions relating to religious matters for which they have no knowledge or training whatsoever and have implemented the directions of the respondents herein in violation of the established traditions, practices and agamas of the temples.
- c. The illegally present Executive Officers have chronically and miserably failed to protect the movable and immovable properties of the temples and endowments. More than 100,000 acres of Temple and Endowment lands are under encroachments and/or hostile occupation. About 47,000 acres of agricultural lands have disappeared since 1986 and the Respondents have no valid explanation for this huge loss of properties worth more than Rs. 10,000/- Crores.
- d. Their record over 30 years in not realising the due income from the properties of the temples and endowments is there for all to see. The failure to realise the due income and the obnoxious and illegal practice of the Respondents to utilise even that meagerly collected income for non-temples purposes including buying luxury vehicles for HR&CE Minister, HR&CE officials, building regional Joint Commissioners’ and Assistant Commissioners’ offices of the HR & CE Department building bus-stands for Municipalities, etc.



e. The Respondents have failed to conduct external audit as required under the 1959 Act and to conduct concurrent audits in temples having more than Rs. 5.00 Lakhs as annual income. Audit objections accumulating 1.5 million have not been resolved since 1986 and no action have been taken against the erring officials including the illegally present Executive Officers. This has emboldened such illegal Executive Officers to plunder and loot further and with impunity, temple funds and properties with the active connivance and directions of the Respondents herein.

37. I respectfully submit that proof of instances of serious mismanagement have been appended to the typed set of papers enclosing this Writ Petition. This Petitioner craves the leave of this Hon'ble Court to provide detailed proofs of evidence of such serious instances of mismanagement and criminal breaches of trust by the illegally present Executive Officers and officials of the HR & CE Department and Government.

38. I respectfully submit that in this background, it has come to my knowledge through tender notifications issued on the website of the Respondent Department that the Respondent Department, in Temples without valid Trustee appointments and having Executive Officers who are in office without any order of appointment of Executive Officers, has floated tenders to the tune of almost Rs. 2.16 Crores /- (Rupees Two crores and sixteen lakhs). They are as follows:





- a. **Sri Gangadeeswarar Temple, Purasawakkam:** A tender was issued by the Executive Officer of the said Temple for construction of a Kaariya Mandapam at a cost of about Rs. 42,15,010/- (Rupees forty-two lakhs fifteen thousand and ten only), vide Tender Ref No. Commissioner Na. Ka. No. 4082/2021/Q1 dated 17.03.2022. The tender, as per the website, was opened on 28.04.2022 at 4PM.
- b. **Sri Ranganatha Perumal Temple, Tiruneermalai:** A tender was issued by the Executive Officer of the said Temple for construction of staff quarters at a cost of Rs. 1,74,19,942/- (Rupees one crore seventy four lakhs nineteen thousand nine hundred and forty two only), vide Tender Ref No. 2843/2021/A2 dated 27.10.2021. The tender, as per the website, was opened on 20.04.2022 at 3PM.

39. I respectfully submit that the tender documents were not available by the time I was aware of the same. None of the Temples have any valid order of appointment of Executive Officers. I respectfully submit that the above are clear examples as to how Executive Officers, without valid appointment orders, have been taking major decisions, without duly appointed trustees. In fact, the Madurai Bench of this Hon'ble Court, in W.P.No. 10903 of 2020, vide Order dated 22.09.2020, has clearly stated that as per Rule 11 of Collection of Income and the Incurring of Expenditure Rules, no expenditure shall be incurred without the written order of the trustee and that the trustee shall satisfy himself that the expenditure is necessary and that it has budgetary sanction. Stating thus, the Writ Petition was allowed and the tender notification was quashed and



would further hold that even a Fit Person cannot issue a tender notification. In pursuant to the said order, trustees were appointed to the said temple who had later resigned from the post and thereafter once again, the Executive Officer of the said temple was appointed as fit person. Being aggrieved by the same, I initiated contempt proceedings in Cont. P. (MD) 677/2022 which came to be listed on 27.04.2022. This Hon'ble Court, on the said day was pleased to make the following observation:

*“It is expected that the process of filling up the board of trustees will be filled up by 30.06.2022 & that the undesirable practice of eo also functioning as a fit person for an indefinite and long period of time will cease. It is also expected that no policy decision will be taken in the meanwhile. Post on 30.06.2022.”*

Hence, it is trite to mention that in the absence of trustee to a temple, no major decisions with particular reference to financial decision cannot be taken by the government servants appointed by the respondent department.

40. I respectfully submit that if the tenders are awarded and the funds are disbursed, grave prejudice would be caused to the rights of the Deity and the devotees of the said Temples. It is therefore necessary that the Respondents and their men and officers and anyone acting on their behalf, including the illegally present executive officers in the subject temples are injuncted from taking any administrative actions, much less issuing tender notifications pertaining to the subject Temples, pending appointment of Trustees. I, as a worshipper and a



person having interest, will be put to grave hardship should the injunction not be granted as I am entitled to insist that the affairs of the Temple are conducted in accordance with the provisions of the Act.

41. I respectfully state that the Executive officers are paid and maintained by the Department at the cost of the temples. More than 60% of the revenue are paid towards the salary of the staff. In fact, the amounts spent on the maintenance of the temples are less and absolutely insignificant. The contribution made by the public for the temple is to promote the religious fervour and not to run the administration of the Hindu Religious Department. It is annoying that the contributions made by the worshipping public is spent on everything other than the purpose for which it is intended.

42. As stated supra, I am a worshipper of the subject Temples and a person having interest as contemplated under the Act and hence, I being left with no other efficacious and/or alternative remedy, I am preferring the present Writ Petition under Article 226 of Constitution of India, on the following amongst other:

### **GROUND**

A. The communication dated 02.06.2021 is ex facie arbitrary, illegal and unjust as the circumstances which necessitate the appointment of executive officers are not known in the absence of appointment orders.



- B. The term or period of appointment of the executive officers is not known in the absence of the appointment orders therefore rendering the appointments legally unsustainable.
- C. The continued presence of the Executive Officers in Hindu Religious Institutions even with valid orders are in contravention of the dicta of the Hon'ble Supreme Court in Dr. Subramanian Swamy vs. State of Tamil Nadu (2014) 5 SCC 75 and Sri la Sri Gnanasambanda Desiga Pandara Sannati vs. State of Madras (1959 AIR SC 1683) wherein the Hon'ble Supreme Court had held that the appointment of executive officers can only be a temporary arrangement and should be co-terminus with the evil sought to be remedied by such an appointment and therefore in the absence of any stipulation on their continuance vitiates the appointments itself.
- D. Furthermore, in the judgments cited supra, the Hon'ble Supreme Court also held that the power under the 1959 Act for appointment of an executive officer could not have been exercised in the absence of any prescription and circumstances necessitating such appointment and therefore the lack of such reasoning would itself render the functioning of executive officers ex-facie arbitrary, illegal, unjust and non-est. The conditions necessary to be prescribed under Section 45(1) of the HR & CE Act, 1959 were prescribed and notified only on 06.11.2015 and any earlier appointments of Executive Officers are clearly without any legal authority.





- E. When even orders purported to have been issued under Section 45(1) of the HR & CE Act, 1959 that were issued before 06.11.2015 are invalid and without any legal authority since conditions prescribed for such orders of appointment of Executive Officers were not framed and notified, it is crystal clear that presence of Executive Officers without any orders is downright illegal and an affront on the Fundamental Rights of the Hindu Citizens of this State and Country and on the Constitution of India.
- F. The claim, albeit unsustainable, by the 2<sup>nd</sup> Respondent that appointments of executive officers made before the 2015 Rules do not require adherence to the term limit of five years, is a clear attempt by the HR&CE Department to do indirectly what it cannot do directly and is therefore a fraud played on the Constitution and on this ground alone the prayer ought to be allowed.
- G. The 2<sup>nd</sup> Respondent in the Impugned Communication categorically stating that appointment of executive officers could be made by the Commissioner for periods not exceeding 5 years does not hold merit and is in contravention of Article 31-A(1)(b). Further, the claim of the 2<sup>nd</sup> Respondent Commissioner that Rule 10 of the 2015 Rules saves the powers of the executive officer who has been holding the post immediately before the date of the commencement of these Rules, is a serious non application of mind on the part of the 2<sup>nd</sup> Respondent.



- H. The 2<sup>nd</sup> Respondent while citing Rule 10 of the 2015 Rules has failed to appreciate the distinction between the powers of an office/position and the limitation on such an office or position itself. The period or term through which an Executive Officer, or any similar authority can function, is clearly a limitation on the office of the executive officer itself and is not a power of the office.
- I. The admission of the 2<sup>nd</sup> Respondent that the Executive Officers can continue in perpetuity suffers from serious malafides, illegality and is grossly arbitrary and is therefore violative of Article 14, 21, 25 and 26 of the Constitution and also the dicta of the Hon'ble Supreme Court cited supra.
- J. The Government Executive in any event does not have any power under the 1959 to frame Rules with retrospective operation as no such provision exists either expressly or by necessary implication.
- K. The Impugned Communication is manifestly arbitrary as it is irrational and capricious and is therefore violative of Article 14 of the Constitution of India.
- L. That the Government has taken over the administration of only Hindu Temple and Endowments without even an order of appointment made under the enabling provisions of an appropriate law would also reveal violation of Article 15(1) of the Constitution of India by the Respondents herein.



- M. The actions of the respondents violate the Fundamental Rights of the worshippers of the religious institutions and the trustees guaranteed under Articles 14, 15(1), 21, 25, 26 and 29(1) of the Constitution of India.
- N. Placing 100s of Executive Officers in Hindu Temples and Endowments without any orders of appointment validly made under any of the enabling provisions of the 1959 Act is a fraud on the statute and on the Hindus of this State. No court can condone or allow this fraud to continue especially when it is against the Constitution and the statute and has also proven to be highly detrimental to the welfare of the Hindu religious institutions.
- O. The continuing presence of the Executive Officers of the Hindu Religious and Charitable Endowments Department present in the Hindu Temples for decades together without any valid orders of appointment have resulted in chronic misappropriation of funds of such Hindu Temples by way of salaries and perquisites paid to these illegally present Executive Officers. This has resulted in loss of 1000s of crores of rupees to the Hindu Temples over the past 3 decades or more.
- P. The illegal presence of Executive Officers in Hindu Temples and Endowments have actually resulted in extreme mismanagement of such temples and endowments with more than 100,000 acres of agricultural lands in hostile encroachments, 47,000 acres of lands missing, less than 2% of the due rent of such lands being collected annually, rank corruption in day-to-day administration of the temples and endowments, destruction



of heritage and aesthetic structures of ancient temples, theft of icons, non-protection and effacement of murals, etc. An illegality should not be condoned especially when it wreaks havoc on the welfare of the religious institutions.

Q. In the absence of any validly appointed trustees and in the absence of any valid order of appointment of executive officers, the Respondent Departments cannot issue the impugned tenders and the same are therefore liable to be quashed.

R. Without prejudice to the above grounds, if the appointment orders were never made, the functioning of the executive officers are unjust, arbitrary and illegal and solely on this ground, the functioning of the Religious Institutions ought to be handed over to the Trustees or persons concerned.

43. I respectfully submit that I reserve my Right to file additional grounds subject to the leave of this Hon'ble Court.

44. I am given to understand that the Respondents are in the process of taking decisions having financial implications, arising out of these Tenders and hence it is imperative that this Hon'ble Court treats this Writ Petition as urgent and pass suitable Orders as sought for, failing which I will be put to grave hardship as a worshipper and a person interested in the Petition mentioned Temples. In any event, the Respondents will not be prejudiced if interim Orders are passed as neither they nor the Executive Officers who are claimed to be appointed with valid Orders and are now squatting in the Petition mentioned Temples illegally,





are anyway not the decision making authority, even in the absence of Trustees.

Hence, the present Writ Petition.

It is therefore humbly prayed that this Hon'ble Court may kindly be pleased to:

- (i) Pass an Order of Interim Injunction restraining the Respondents, their men, servants, officers, authorities, agents, Executive Officers appointed by them in the Petition mentioned Temples and any other person acting on their behalf, from in any manner taking any administrative decision with regard to the said Temples that would have serious financial and other impacts, with particular respect to calling for Tenders, except those required for the day to day functioning of the Temples like conduct of daily poojas and rituals, payment of salaries and wages, upkeep and general maintenance of the temples pending the outcome of this Writ Petition;
- (ii) Direct the Respondents to publish on the website of the HR&CE Department, copies of the orders of appointment of Executive Officers, if any, made to each individual Temple and Endowment;
- (iii) Issue a WRIT OF MANDAMUS or any other Writ or Order of Direction in the nature of Mandamus, directing the Respondents to remove the Executive Officers illegally present in the Petition mentioned Temples without any Order of appointment and thereby appoint Hereditary or Non-Hereditary Trustees to the said Temples, as the case may be and handover the administration of the same to the said Hereditary or Non-Hereditary Trustees or communities or Sampradayas of the said Temple from whose



hands the administration was taken over by the Hindu Religious and Charitable Endowments Department by duly handing over the properties of such Temples and Endowments as were with them at the time of takeover of such Temples and Endowments, along with the additional properties that were added since the time of such take over by the instrumentalities of the said Department and consequently forbear the Respondents, their men, servants, officers, authorities, agents, Executive Officers appointed by them in the Petition mentioned Temples and any other person acting on their behalf, from in any manner taking any administrative decision with regard to the said Temples that would have serious financial and other impacts, with particular respect to calling for Tenders, except those required for the day to day functioning of the Temples like conduct of daily poojas and rituals, payment of salaries and wages, upkeep and general maintenance of the Temples; and

- (iv) 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 9<sup>th</sup> day of May, 2022

and signed his name in my presence



BEFORE ME

Advocate, Chennai