

S.V. Hariharan vs the Commissioner

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Court : Kerala

Decided On : Feb-06-2025

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice Muralee Krishna S.

Appeal No. : WP(C)/736/2025

Appellant : S.V. Hariharan

Respondent : The Commissioner

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN &
THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.
THURSDAY, THE 6TH DAY OF FEBRUARY 2025 / 17TH MAGHA,
1946 WP(C) NO. 736 OF 2025 PETITIONER: S.V. HARIHARAN, AGED
64 YEARS S/O. K.R. VENKATESWARA IYER, SUBRAMANIA MADOM,
PARALI VILLAGE, PARALI. P.O., PIN - 678612 BY ADVS.BEJOY
JOSEPH P.J. M.RAMESH CHANDER (SR.) GOVIND G. NAIR BALU
TOM BONNY BENNY RESPONDENTS:

1 THE COMMISSIONER MALABAR DEVASWOM BOARD, HOUSE FED COMPLEX, MINI BYPASS, ERANHIPALAM, KOZHIKODE, PIN - 673006 2 EXECUTIVE OFFICER, SREE MANAPPULLY BHAGAVATHI TEMPLE, KIZHAKKE YAKKARA, PALAKKAD TALUK, PIN - 678701 *3 DEPUTY DIRECTOR, KERALA STATE AUDIT DEPARTMENT, MALABAR DEVASWOM BOARD AUDIT, REGIONAL OFFICE, PALAKKAD-678 001 [THE AUDIT OFFICER - CORRECTED* KERALA STATE AUDIT DEPARTMENT, MALABAR DEVASWOM BOARD ZONAL OFFICE, THIRUVANGAD, THALASSERY, KANNUR DISTRICT, PINCODE, PIN - 670103] THE DESCRIPTION OF THE 3RD RESPONDENT IS SUO MOTU CORRECTED AS ABOVE AS PER ORDER DATED 06.02.2025 IN THE WRIT PETITION *ADDL.R4 MALABAR DEVASWOM BOARD REPRESENTED BY ITS SECRETARY, HOUSEFED COMPLEX, ERANHIPPALAM P.O., CALICUT, PINCODE 673 006 IS IMPEADED AS ADDITIONAL R4 AS PER ORDER DATED

13.01.2025 IN IA 01/2025 IN THE WP(C) R BY BY ADV K.MOHANAKANNAN SMT. RENJANIE R, SC, MDB THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The petitioner, who is a devotee of Sree Manappully

Bhagavathi Temple, which is a controlled institution under the additional 4th respondent Malabar Devaswom Board, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 1st respondent Commissioner, Malabar Devaswom Board, to take up Ext.P1 representation dated 14.11.2024 and initiate action forthwith and to cancel the appointments of those temporary employees, who have been appointed through

the back door in Sree Manappully Bhagavathi Temple. The petitioner has also sought for a writ of mandamus commanding the 3rd respondent Deputy Director, Kerala State Audit Department, Malabar Devaswom Board Audit to initiate action based on the audit report for the year 2019-22 with respect to the aforesaid temple.

2. Going by the averments in the writ petition, the grievance of the petitioner is that in violation of the statutory

orders issued by the Malabar Devaswom Board, many appointments are illegally made in Sree Manappully Bhagavathi Temple, by the 2nd respondent Executive Officer, to the posts

which are not sanctioned by the Board. It is alleged that such appointments are done totally in violation of the relevant circulars issued by the Board and also the directions contained in the judgments of this Court. After making those appointments through the back door, without even calling for applications from the public, thereby denying eligible persons the right to seek employment, the appointees are allowed to continue for years and now the attempt is to get orders from the Board to regularise their appointment. Huge expenses are incurred by the temple for paying salary to such employees. In the audit report for the year 2019-22, it is specifically found that many persons have got appointments in the temple illegally, and they are continuing in the said posts. In the audit report, an objection is

also raised regarding an expenditure to the tune of Rs.30,00,000/- towards salary of such illegal appointees and the said expenditure has not been sanctioned by the State Audit.

3. On 13.01.2025, when this writ petition came up for

admission, the learned Standing Counsel for Malabar Devaswom Board took notice for the 1st respondent Commissioner and also for the additional 4th respondent Board. The learned Senior Government Pleader took notice for the 3rd respondent. This Court issued urgent notice on admission by speed post to the

2nd respondent Executive Officer, returnable within three weeks. The learned Standing Counsel for the Board and the learned Senior Government Pleader were directed to get instructions.

4. Heard the learned counsel for the petitioner, the

learned Standing Counsel for Malabar Devaswom Board for the 1st respondent and also for the additional 4th respondent, the learned counsel for the 2nd respondent Executive Officer and also the learned Senior Government Pleader for the 3rd respondent Deputy Director, Kerala State Audit Department.

5. During the course of arguments, the learned counsel

for the 2nd respondent Executive Officer would submit that no temporary employees are presently working in Sree Manappully Bhagavathi Temple, which has already been reported to the 1st

respondent Commissioner, Malabar Devaswom Board, on 20.01.2025. The vacancies in the temple, other than those occupied by permanent employees, will be filled up only after obtaining sanction from the 1st respondent Commissioner, after complying with the procedure prescribed in Circular No.J8/7347/ 2010/MDB dated 15.10.2010.

6. Another relief sought for in this writ petition is a writ rd

of mandamus commanding the 3 respondent Deputy Director, Kerala State Audit Department to initiate action based on the audit report for the year 2019-22 with respect to Sree Manappully Bhagavathi Temple.

7. Other than Ext.P1 representation dated 14.11.2024

made by the petitioner before the 1st respondent Commissioner, Malabar Devaswom Board, no documents are placed on record in support of the aforesaid relief sought for against the 3rd respondent Deputy Director. Not even a copy of the said audit report for the year 2019-22, forms part of the pleadings in this writ petition. Specific pleadings in support of that relief find no place in the statement of facts.

8. In Bharat Singh v. State of Haryana [(1988) 4

SCC 534] the Apex Court held that, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the Court will not entertain the

point. The Apex Court held further that there is a distinction between a pleading under the Code of Civil Procedure Code, 1908 and a writ petition or a counter affidavit. While in a pleading, i.e., a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

9. In M/s.Larsen and Toubro Ltd. v. State of

Gujarat [(1998) 4 SCC 387] the Apex Court was dealing with a case arising out of the proceedings initiated for the acquisition of land for M/s.Larsen and Toubro Ltd. under the provisions of the Land Acquisition Act, 1894. The Apex Court noticed that, in the absence of any allegation that Rule 3 the Land Acquisition (Companies) Rules, 1963 had not been complied and there being no particulars in respect of non compliance of Rule 4 also, it is difficult to see as to how the High Court could have reached the finding that statutory requirements contained in these Rules were not fulfilled before issuance of notification under Section 4 and declaration under Section 6 of the Land Acquisition Act. High Court did not give any reason as to how it reached the

conclusion that Rules 3 and 4 had not been complied in the face

of the record of the case. Rather, it returned a finding which is unsustainable that it was "not possible on the basis of the material on record to hold that there was compliance with Rules 3 and 4". The Apex Court held that, it is not enough to

allege that a particular Rule or any provision has not been complied. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non compliance with a statutory requirement. Ordinarily, no notice can be taken on such an allegation which is devoid of any particulars. No issue can be raised on a plea, the foundation of which is lacking. Even where rule nisi is issued, it is not always for the department to justify its action when the court finds that a plea has been advanced without any substance, though ordinarily department may have to place its full cards before the court. On the facts of the case, the Apex Court found that the State has more than justified its stand that there has been compliance not only with Rule 4 but with Rule 3 as well, though there was no challenge to Rule 3 and the averments regarding non compliance with Rule 4 were sketchy and without any particulars whatsoever. High Court was, therefore, not right in quashing the acquisition proceedings.

10. In Narmada Bachao Andolan v. State of Madhya

Pradesh [(2011) 7 SCC 639] a Three-Judge Bench of the Apex Court held that, it is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the pleas. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question(s) in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that as a rule relief not founded on the pleadings should not be granted. Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be

violative of the principles of natural justice.

11. Viewed in the light of the law laid down in the

decisions referred to supra, conclusion is irresistible that, in the absence of proper pleadings and materials, the petitioner is not entitled to seek a writ of mandamus commanding the 3rd respondent Deputy Director, Kerala State Audit Department, Malabar Devaswom Board Audit, to initiate action based on the audit report for the year 2019-22 in respect of Sree Manappully Bhagavathi Temple.

In the above circumstances, this writ petition is disposed

of, taking note of the submission made by the learned counsel for the 2nd respondent Executive Officer that no temporary employees are presently working in Sree Manappully Bhagavathi Temple, which has already been reported to the 1st respondent Commissioner, Malabar Devaswom Board, on 20.01.2025, and that the vacancies in the temple, other than those occupied by permanent employees, will be filled up only after obtaining sanction from the 1st respondent Commissioner, after complying with the procedure prescribed in Circular No.J8/7347/ 2010/MDB

dated 15.10.2010. The 1st respondent Commissioner shall proceed with the request, if any, made for filling up the vacancies in the sanctioned posts in Sree Manappully Bhagavathi Temple, other than those occupied by permanent employees, strictly in accordance with law. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- MURALEE KRISHNA S., JUDGE AV APPENDIX OF WP(C) 736/2025 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE REPRESENTATION DATED 14.11.2024 TO THE FIRST RESPONDENT WITHOUT THE ENCLOSURES.

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