

M.E. Subramani and ors. Vs. the Commissioner, Hindu Religious and Charitable Endowments (Administration) and ors.

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Court : Chennai

Decided On : Nov-06-1975

Reported in : (1976)1MLJ281

Appellant : M.E. Subramani and ors.

Respondent : The Commissioner, Hindu Religious and Charitable Endowments (Administration) and ors.

Judgement :

ORDER

G. Ramanujam, J.

1. The petitioners are three of the non-hereditary trustees out of the five appointed for a religious institution comprising the Arulmigu Margasahaya Iswarar, Varasiddhi Vinayakar and Karunakara Perumal, etc., group of temples at Maduravoyal, Saidapet taluk, Chingleput District, by an order dated 27th August, 1973 of the Assistant Collector, Hindu Religious and Charitable Endowments. It appears that apart from the three trustees who are the petitioners herein, the other two are not effectively functioning as trustees. The 4th trustee is said to be a former managing trustee and he is said to be giving constant trouble to the petitioners who are said to be sincere in carrying out their duties as trustees. The

5th trustee is said to have resigned from the trusteeship.

2. The first respondent herein, in exercise of his powers under Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, had appointed, by his order dated 4th September, 1975 the third respondent as the Executive Officer of the group of temples in question. The petitioners have challenged, in this writ petition, the validity of the said appointment.

3. According to the petitioners, the order appointing the third respondent as the Executive Officer of the group of temples, in their charge, is invalid for 3 reasons viz.,

(1) Section 45 does not give any indication as to when and in what circumstances the power of appointing an Executive Officer should be exercised and therefore, the power under that section cannot, validly, be exercised as it is unguided and arbitrary;

(2) Section 45 enables the Commissioner to appoint an Executive Officer for a religious institution subject to such conditions as may be prescribed and therefore, so long as the conditions contemplated by that section have not been prescribed by the State Government, the Commissioner has no jurisdiction to exercise that power contained in that section; and

(3) In any event, the Commissioner cannot, by his order, appoint an Executive Officer under the said section without giving any show cause notice to the existing trustees or without giving any finding that their management is defective.

4. As regards the first contention, the Learned Counsel points out that Section 45 cannot be taken to have conferred on the Commissioner an unguided and arbitrary power to appoint an Executive Officer to a religious institution, that the mere statement in the impugned order that it is for the better administration of the temples, is quite insufficient, and that the Commissioner must find that there are circumstances warranting him to appoint an Executive Officer. I am of the view that Section 45 cannot be taken to confer an unguided or arbitrary power on the Commissioner, that the power under the section has got to be exercised in terms

of the policy of the Act i.e., is to provide for the administration and governance of the religious and charitable institution, and endowments, under the State of Tamil Nadu. If, in fact, the Commissioner exercises the power under Section 45 on extraneous or irrelevant considerations, then, the particular exercise of the power can be challenged as being outside the purview of Section 45. In this case, the first respondent has specifically stated, in the order appointing the executive officer, that the power has been exercised for the better and proper administration of the group of temples. I cannot say that this is, in any way, either irrelevant or extraneous. I cannot, therefore, hold that the impugned order passed by the first respondent is, in any way, arbitrary.

5. Regarding the second contention that since no conditions have been prescribed by the rules subject to which the power under Section 45 has to be exercised, the Commissioner cannot exercise the power, the Learned Counsel states that the prescribing of the conditions is a condition precedent for the exercise of the power under Section 45 (1). In support of this contention, Learned Counsel places reliance on a decision of this Court in *O. Radhakrishnan and Anr. v. Manickam and Ors.* : (1974)2MLJ179 In that case, the Court had to consider the scope of Section 65 (4). Section 65 (4) enables the Commissioner to modify or cancel an existing scheme in respect of a mutt or a specific endowment subject to such conditions and restrictions as may be prescribed. But, this was subject to the following proviso, viz.. 'Provided that such cancellation or modification of a scheme in force shall be made only subject to such conditions and restrictions as may be prescribed'. In the context of the said provision, the Court held that, as the language in Section 65 (4) (a) of the Act stands, the Commissioner has no power to modify or cancel a scheme on an application made by a party and that the power conferred on the Commissioner has to be exercised suo motu only. The Court also held that so far as the proviso to Section 65 (4) (a) is concerned, it does not provide merely a mode of exercising the power, but it really constitutes a restriction or circumscription on the exercise of the power itself and, therefore, without there being the prescription therefor, the power itself is incapable of being exercised. The language of Section 65 (4) (a) specifically says that the power of modification or cancellation of an existing scheme under Section 65 (1) shall be exercised only subject to such conditions and restrictions as may be prescribed

and it is because of that peculiar wording, the proviso was construed as limiting the power under Section 65 (1). But, Section 45(1) is in a different form. It says 'The Commissioner may appoint, subject to such conditions as may be prescribed, an Executive Officer for any religious institution, either a mutt or specific endowment attached to a mutt'. Having regard to the language used in this section, it is not possible to construe the words 'subject to such conditions as may be prescribed' as being a condition precedent for the exercise of the power under Section 45 (1). If the conditions have been prescribed, then, the power has to be exercised only subject to those conditions. But, if the conditions are not prescribed, it cannot be said that the power cannot, at all, be exercised. The power conferred on the Commissioner to appoint an executive officer by the Legislature cannot be said to have been taken away by the failure or inaction on the part of the Government to prescribe the conditions. The expression 'as may be prescribed' occurring in the section indicates that the rule-making authority may or may not prescribe the conditions. If the conditions are prescribed, then, the power under Section 45 (1) is subject to those conditions. But, if no conditions are prescribed, then, the power of the Commissioner can be exercised without any restriction, of course, subject to the other guidelines indicated by the policy and object of the Act. In my view, the learned, counsel is not right in his submission that Section 45(1) cannot be invoked by the Commissioner to appoint an executive officer so long as no conditions have been prescribed as contemplated by that section by the rule-making authority.

6. As regards the third contention that the impugned order is vitiated for the reason that the Commissioner has not given any show cause notice to the petitioners nor their administration has been found defective, it is seen that Section 45 (1) does not, in terms, provide that the power can be exercised, only after issuing the show cause notice to the existing trustees or after conducting an enquiry into the state of affairs of the temples. In this case, the order proceeds on the basis that the appointment of an executive officer is necessary for the better and efficient administration of the temples. It has been recently held by this Court in Writ Petition No. 5215 of 1975 that if the Commissioner finds that the appointment of an executive officer for a particular religious institution is necessary for the better and efficient management of that institution, he can proceed to appoint the

executive officer without any enquiry into the affairs of the temples or without any notice to the existing trustees. I have to, therefore, reject this contention of the counsel for the petitioner as well.

7. In the result, this writ petition is dismissed.

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