

V. Ariyamuthu Vs. the District Temple Administration Committee Represented by Its Secretary/Deputy Commissioner, H.R. and C.E. Administration Department and ors.

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Court : Chennai

Decided On : Mar-04-1997

Reported in : (1998)1MLJ44

Appellant : V. Ariyamuthu

Respondent : The District Temple Administration Committee Represented by Its Secretary/Deputy Commissioner, H.R.

Judgement :

ORDER

E. Padmanabhan, J.

1. The writ petitioner, son of the 3rd respondent hereditary trustee (under suspension) has filed the present writ petition, praying for the issue of a writ of certiorarified mandamus to call for the records of the proceedings of the 1st respondent in Na. Ka. No. 17108/93 A3, dated 17.3.1995 to quash the same and for directing the first respondent to appoint the petitioner as fit person to Arulmigu Sri Loga Prakasa Moorthy and Alagia Manavala Perumal temples in the temporary vacancy caused on the suspension of the 3rd respondent.

2. There is no controversy with respect to the factual aspects of the matter in the present writ petition. The short facts are as set out here under: The 3rd respondent had already been declared as hereditary trustee of Arulmigu Sri Loga Prakasa Moorthy and Alagia Manavala Perumal Temples in O.A. No. 119 of 1975 passed under Section 53(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 on 17.3.1976. On 14.2.1994 by exercising the power conferred under Section 53(4) of the Act, the 3rd respondent was placed under suspension pending disposal of the charges framed against the 3rd respondent by the 1st respondent. According to the petitioner, he had made representation on 22.2.1994 to appoint him as fit person in the vacancy caused consequent to the suspension of the 3rd respondent hereditary trustee. The said trustee had challenged the order of suspension by preferring appeal before the Commissioner H. R & C.E. in A.P. No. 9 of 1994 after due consideration, the Commissioner, the appellate authority by proceedings dated 27.10.1994 dismissed the appeal and affirmed the order of suspension. On 17.3.1995, the 1st respondent had appointed the 2nd respondent Executive Officer of Arulmigu Madanagopalaswami temple Perambalur as the Fit person in exercise of power conferred under Section 53(4) of the Act. At this stage, the present writ petition has been filed by the writ petitioner, who is the son of the 3rd respondent. It is pointed out by the learned Special Government Pleader that the 3rd respondent is guilty of serious misconduct with respect to assets and properties of the temple in question and there was every justification to place the 3rd respondent under suspension. It was also pointed by the learned Special Government Pleader that as the 3rd respondent is the father of the petitioner, who has been placed under suspension and at this stage, it is not also in the interest of institution to appoint the petitioner as Fit person as according to the instructions, the petitioner had assisted the 3rd respondent in the alienation of temple properties without the permission of the H. R & C.E. Department.

3. On the other hand, Mr. K. Alagiriswami, Senior Counsel, appearing for the petitioner placing reliance upon the observation made by the Division Bench of this Court in Pandian Zamindar of Uthumalai v. Deputy Commissioner, H. R & C.E. (1996) 1 M.L.J. 288 contends that the petitioner's request for being appointed as the fit person even to hold office during the suspension of the 3rd respondent

should have been considered by, the 1st respondent. The learned Senior Counsel drew my attention to the observation of the Division Bench in *Pandian Zamindar of Uthumalai v. Deputy Commissioner*, H.R. & C.E. (1996) 1 M.L.J. 288, which is as follows:

Nevertheless, we are of the view that having regard to the nature of the office of hereditary trustee under the general law, the appellant is entitled to contend that, although Sub-section (4) does not provide for it, it is necessary, while appointing a fit person, to have due regard to the claims of the members of the family of such trustee.

4. Thus according to the learned Senior Counsel the petitioner's request should have been considered while appointing a fit person. Admittedly there is no vacancy and the 3rd respondent had been placed under suspension and in terms of Section 53(4) of the Act, a fit person has been appointed to discharge the duties and for performance of the functions of the trustee. In my considered view, there is no illegality in the order passed by the 1st respondent. On the other hand, Mr. Subramaniam, learned Special Government Pleader contends that the petitioner had no right at all for being considered for appointment as a fit person under Section 53(4) of the Act and only when there is vacancy either permanent or temporary, the next in the line of succession to the hereditary trustee is required to be considered. It is also pointed out by the learned Special Government Pleader that it is not proper in the interest of administration to consider the petitioner, as the 3rd respondent his father had acted against the interest of the temple and in fitness of things it would be proper to appoint a fit person other than the writ petitioner.

5. The learned Special Government Pleader drew my attention to the pronouncement of K. Srinivasan, J., in *Soundararaja Mudaliar v. Deputy Commissioner*, H.R. & C.E. : (1964)1MLJ236, has held thus:

The other ground that the Deputy Commissioner has no jurisdiction to appoint a stranger as a fit person does not commend itself to me. It is true that in the case of a hereditary trustee, when a permanent vacancy has to be filled up the next in the line of succession is entitled to the office; equally, in a case where a temporary

vacancy arises. But under Section 54(2) of the Act, the filling up a temporary vacancy by the selection of a person next in the line of succession is required only in a case where that vacancy arises a result of suspension of the hereditary trustee as a measure of punishment under Section 53(2) of the Act. In a case where a trustee is placed under interim suspension, the provision does not appear to recognise that a vacancy even of a temporary nature has come to exist. It would follow therefore, that in such case it is not necessary for the Deputy Commissioner to choose the person next in the line of succession. That a stranger can be appointed in such circumstances has been decided by this Court in Writ Appeal No. 277 of 1962. This point is without substance.

Srinivasan, J.

Had followed the Division Bench Judgment of this Court in W.A. No. 277 of 1962. The identical view had been taken by the Division Bench in Pandian Zamindur of Uthumalai v. Deputy Commissioner, H.R. & C.E. (1996) 1 M.L.J. 288. The Division Bench had also held thus:

The scheme of Section 54, appears to be that, where a vacancy arises, whether permanent or temporary, it should be filled up by the next in the line of succession, but if there is any dispute about succession or the vacancy cannot be filled up for other reasons, instead of filling up the vacancy, power is given for appointment of a fit person, so that the functions of the hereditary trustee may be continued to be discharged pending filling up of the vacancy. Sub-section (2) which is we said relates to a temporary vacancy, covers cases of suspension under Sub-section (2) of Section 53 and a perusal of Sub-section (2) of Section 53 shows that a suspension need not necessarily be by way of punishment. Clause (a) of Sub-section (2) empowers suspension on the ground that the trustee 'Ceases to profess the Hindu religion. Similarly, clauses (f) and (h) of the sub-section enable suspension in case of the trustee being of unsound mind or an undischarged insolvent. It is, therefore, clear that Sub-section (2) of Section 54 not merely covers a temporary vacancy arising from suspension by way of punishment, but also extends to a suspension not by way of punishment. It may be possible therefore, to assume that Sub-section (2) of Section 53, because of the power to

suspend on enquiry, may include also a power of suspension pending an enquiry. But Sub-section (4) of Section 53 specifically provides for such a contingency, while suspension by punishment is separately dealt with by Sub-section (2) of Section 53 and also by Sub-section (5) of Section 53, which provides for appeal against the orders made under Sub-section (2) of that section. It becomes, therefore, clear that as Sub-section (4) makes a specific provision for suspension pending an enquiry, such a power is, therefore, not covered by the other provisions which provide for suspension following an enquiry, we are of the view, therefore, that suspension pending an enquiry does not fall within the ambit of Section 54 of the principle that a special provision excludes the general. Sub-section (4) while providing for power to appoints fit person to discharge the duties and perform the functions of the trustee. The sub-section does not speak of filling up a vacancy unlike Section 54(1) and (2). Nor does Sub-section (1) prescribe any procedure to be followed in appointing a fit person, as for instance the Explanation to Sub-section (3). The statutory provisions, as they stand now, do not require that, when appointing a fit person, the claims of the members of the trustee's family should be taken into account. ' The Division Bench had taken the same view of Srinivasan, J. The statutory provision Section 53(4) which was interpreted by Srinivasan, J. and later Division Bench in Pandian Zamindar of Uthumalai v. Deputy Commissioner, H.R. & C.E. (1996) 1 M.L.J. 288 have laid down that while appointing a fit person under Sub-sec (4) of Section 53, the claims of the members of the trustee's family do not require to be taken into consideration, nor the claim of the petitioner should be taken into account.

6. Mr. K. Alagiriswami, learned Senior Counsel placed reliance on the observation of the Division Bench, which passage has already been set out above and contends that when the petitioner had made a request it is incumbent on the part of the 1st respondent to consider the request and this should not be ignored. The law laid down by the Division Bench in W.A. No. 277 of 1962, K. Srinivasan, J., in Soundararaja Mudaliar v. Deputy Commissioner, H.R. & C.E. : (1964)1MLJ236 and the Division Bench in Pandian Zamindar of Uthumalai v. Deputy Commissioner, H.R. & C.E. (1996) 1 M.L.J. 288, made it clear that the petitioner is not entitled to be appointed as a fit person when the 3rd respondent had been placed under suspension under Sub-sec (4) of Section 53. The statutory

provisions Sub-section (4) of Section 53 provides for appointment of a fit person. Section 54 which provides for filling upon vacancies in the office of hereditary trustee, when a vacancy arises either permanent or temporary. This provision cannot be read into Sub-section (4) of Section 53 nor a right is conferred on the petitioner for being appointed as a fit person. The Division Bench in (1966) 1 M.L.J. 288 had observed that although Sub-section (4) does not provide for it, the claims of the members of the family has to be considered and on the facts of case of that case, the Division Bench had held so. The learned Special Government Pleader pointed out that the writ petitioner had joined hands with the 3rd respondent in alienating the properties and assets of the temple and as such, he cannot be considered suitable for being appointed as a fit person. In the order passed by the 1st respondent, no such reasonings have been assigned and in fact, the writ Petitioner's request had not been considered.

7. When Sub-section (4) of Section 53 provides for appointment of a fit person, as already held above, the provisions of Section 54(1) and (2) cannot be relied upon nor it could be pressed into service. In my considered view, as no vacancy had arisen it is not for the first respondent to pass order under Sub-section (1) or (2) of Section 54. As of present the writ petitioner has no right at all. When it is found that the statute provides that a particular thing has to be done in a particular manner it has to be done in that manner and no other manner is permissible. In this case Section 53 provides for filling up vacancy either temporary or permanent in the office of the hereditary trustee and such a contingency provided for in Section 53 cannot be read into Section 54. It has been held in *Martin Burn Limited v. Calcutta Corporation* : [1966]1SCR543 as follows:

A result following a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect.

When the statute does not enable the petitioner in terms of Section 53(4) for being appointed as a fit person in contra to distinction to Section 54 of the Act. In my considered view, the request of the petitioner need not be considered as there is no vacancy as the 3rd respondent had been merely placed under suspension

under Sub-section (4) of Section 53.

8. Viewed from any angle, the impugned proceedings of the 1st respondent is not liable to be quashed not it is vitiated by illegalities. It is also pointed out by the learned Special Government Pleader that the petitioner cannot seek the relief of mandamus in the absence of any right, and the said plea is acceptable. Even otherwise, hat the Division Bench in Pandian Zamindar of Uthumalai v. Deputy Commissioner, H.R. & C.E. (1996) 1 M.L.J. 288 had indicated is that such person could be considered and it is not a must not it is warranted by the statutory provisions.

9. In the circumstances, that writ petition is dismissed with a costs of Rs. 1,000.

10. Consequently, W.M.P. Nos. 17390 of 1995 and 14868 of 1996 are also dismissed.

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