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Court : Kerala

Decided On : Nov-18-2011

Judge : Thottathil B. Radhakrishnan & K. Surendra Mohan

Appeal No. : W.P.(C).No.8991 of 2011 (Y) & 10112 of 2011

Appellant : Satheesh Kumar E

Respondent : Malabar Devaswam Board, Rep. by Its Commissioner, Kozhikode and Others

Judgement :

THOTTATHIL B. RADHAKRISHNAN, J.

1. Four non-hereditary trustees were appointed under the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951, for the Sree Vyrancode Temple, Thirunavaya in Tirur Taluk. Three posts have fallen vacant. Ambika Pulliyathiri Amma, who was the hereditary trustee, died on 18.12.2008. Ambika Devi of Valiyktottu kovilakam staked claim to that post on plea of succession. That was rejected by the Commissioner. In WP(C) 5766/11, she was given a further opportunity to provide materials before the statutory authority within a period of four months. It is submitted that nothing happened after that judgment dated 23.2.2011. This means that as of now, there is none in office as the hereditary

trustee and there is only one non-hereditary trustee. He is K.P. Appukuttan, the petitioner in W.P.(C) 10112/11, whose term expires on 14.6.2012.

2. Malabar Devaswom Board (MDB) authorities invited applications, conducted selection and appointed the private respondents as the non-hereditary trustees as against the three vacancies. Satheesh Kumar E., the petitioner in W.P.(C) 8991/11, who was a non-hereditary trustee till his term expired, lost his application for appointment afresh.

3. The challenge in these writ petitions are to the notifications inviting applications. The grounds raised include the plea that the private respondents are political activists and are, therefore, disentitled to be appointed; that the jurisdiction to appoint non-hereditary trustees is only with the Commissioner and further that, undue haste has been taken in making the selection. During the course of hearing, it was also pointed out that be it either under sub-section (2) or sub-section (5) of Section 39, the competent authority has to record reasons.

4. Going by what the Bench had minuted in orders dated 4th April, 2011 and 8th April 2011, the question whether the impugned action is bad for not recording reasons for it, ought to gain consideration. The Bench also noted later, on 3.8.2011, that on behalf of some of the private respondents, it was pointed out that it is not an instance where a non-hereditary trustee is being appointed for the first time and because there is already a non-hereditary trustee and the proceedings is only to fill up the available vacancy, all that is needed is to appoint a person as against a vacancy of another post of non-hereditary trustee and therefore, the question whether there should be a non-hereditary trustee may not be germane for consideration. It was then pointed out by the learned senior counsel on behalf of the contesting respondents that in such event, the compulsion for a pre-decisional consideration and hearing by the Malabar Devaswom Board authorities, as laid down by this Court on that issue, may not apply to the facts of the case in hand.

5. Following the aforesaid orders, the Bench heard learned senior advocates for the petitioners in these two writ petitions, learned senior advocates for the contesting respondents and the learned standing counsel for the Malabar Devaswom Board on the basis of the materials then on record. Then as regards

law, submissions were made touching sub sections 2 and 5 of the Section 39 of the Hindu Religious and Charitable Endowments Act, 1951, hereinafter, 'the Act' for short and the decisions of this Court in ***KunhiramaVariar v. State of Kerala*** [2011 (2) KLT 707], ***ParameswaranNamboothiri v. Malabar Devaswom Board*** [2011 (2) KLT 988], ***Raman Namboothiri v. Chief Commissioner, HR and CE*** [2004 (1) KLT 945] and ***Muttisree Vishnu Kshetra Samithy v. Assistant Commissioner, HR and CE (Admn)*** [2010 (4) KLT 654]. On the basis of submissions then made on 25.8.2011, it was noted by the Bench, among other things, as follows:

“The crucial issues that arise for decision in these cases are:

- i. What is the scope of the requirement to record reasons to exercise authority under Section 39(5) of the Act to fill up a vacancy of non-hereditary trustee?*
- ii. Whether the exercise under Section 39(5) is similar and co-extensive with; or distinguishable from, the exercise to be carried out under Section 39(2)?*
- iii. The MDB having taken a decision on 28.2.2011, i.e., the date preceding the coming into force of the notification for the Kerala Legislative Assembly Elections, 2011, hereinafter, KLA Elections; is the selection notification bad on account of declaration of KLA Elections?*
- iv. If it were not so, was the decision of the Board vitiated for lack of expression of reasons on the files?*
- v. Does the selection and appointment stand?”*

6. It is also apposite to quote what was recorded in paragraph 7 of the order dated 25.8.2011. It reads as follows:

“We find that there was a change in guard of the office of the Commissioner. The person who issued the notification for the selection on 1.3.2011 was the junior superintendent, holding the charge of Deputy Commissioner and also the charge of the Commissioner. By 7.3.2011, a person, qualified in terms of Section 8C of the Act, has taken charge as the commissioner. We say this on the basis of

materials which are shown to us, though not on record. Learned senior counsel for the private respondents pointed that there was some proceeding at the instance of the Chief Electoral Officer through the District Collector, Malappuram, on the charge that the notification for selection of non-hereditary trustees and their appointment are void by reason of the coming into force of the notification for KLA elections. We are now shown a bunch of papers on behalf of the private respondents (photocopies). We see that on 4.5.2011, the CEO had addressed the District Collector, Malappuram on the issue and the Commissioner of MDB had issued a reply to that on 10.3.2011. That reply is stated to have been signed by the deponent of the counter affidavit filed in this case on behalf of the MDB, viz., K. Ravikumar, who is stated to be the person appointed as Commissioner on regular basis. We have gone through the contents of the explanation given by him on behalf of MDB to the CEO. However, on query, learned standing counsel for MDB appears to have not been briefed by the Board authorities in that regard. We think that those materials cannot be ignored during the course of adjudication of these writ petitions because of the plea that the selections in question have been made hurriedly in the midst of the declaration of KLA elections and during a period when the code of conduct was in force.”

7. In the light of the above, Commissioner, MDB, was directed on 25.8.2011, to place on record all such materials as are available in the MDB files in relation to the issue generated in the matter, commencing with the Chief Electoral Officer's letter dated 4.5.2011. The Commissioner was also to state through affidavit, the result of any proceedings by or at the instance of the Chief Electoral Officer.

8. Following that, the Commissioner, MDB filed additional counter affidavit sworn to on 28.8.2011. In that, he says that Exhibit R2(c) letter dated 5.3.2011 was received from the District Collector, Malappuram, by which, the formation of the Trustee Board was ordered to be stopped until the election process is completed. Thereafter, the District Collector issued order dated 8.3.2011 on an application filed by the non-hereditary trustees clarifying that if the Trustee Board has already been constituted for conducting the day-to-day affairs, the declaration of election will not be a bar. It was also directed by the District Collector in Exhibit R2(d) that election or the other proceedings or declaration can be done only after obtaining

sanction from the Election Commission. The Commissioner further says that by Exhibit R2(e) letter dated 10.3.2011, he gave all details and explanations to the Chief Electoral Officer with regard to the formation of the Trustee Board in the temple. It is appropriate to quote the relevant portion of paragraphs 4 and 5 of that counter affidavit, which reads as follows:

“It is respectfully submitted that by letter dated 10.3.2011 addressed to Chief Electoral Officer. I have given all details/explanations with regard to the formation of the Trustee Board in the temple. I have specifically stated that in the Variamcode Devaswom the vacancy of 2 Non Hereditary Trustees had occurred and yet another Non Hereditary Trustee has resigned from the post on 25.6.2010 and that out of 4 Non Hereditary Trustees, from 2010 July onwards only one person is continuing. It is further stated that for the smooth administration of the day to day affairs of the temple and for ensuring co-operation of devotees it has been decided to fill up the existing posts of the Non Hereditary Trustee and notification was issued on 14.6.2010 in that behalf. Thereafter writ petitions challenging the notification dated 14.6.2010 and also the claim raised by a person claims to be the successor of the Hereditary Trustee were filed as WP(C).25092/10 and 4677/10 in the High Court and pursuant to the orders thereafter on 28.2.2011 the Board has considered the appointment of 3 Non Hereditary Trustees from among the applicants who submitted their applications for appointment of Non Hereditary Trustee and by proceedings dated 1.3.2011 it was accordingly informed to the parties.

It is respectfully submitted that I have clearly pointed out in my letter that 8 months before the notification for general election proceedings were initiated for appointment of Non Hereditary Trustees and in view of the various legal proceedings the appointment was delayed. The appointment order was issued on 1.3.2011 and the election of Chairman was scheduled to be held on 8.3.2011 is as per the provisions of the HRand CE Act and no monetary benefit is attached to the post of Chairman and Non Hereditary Trustees and there is no question of any influence and therefore it is not in violation of code of conduct. It is further pointed out that this Hon’ble Court by judgment in WP(C).20788/10 dated 8.7.2010 directed the Executive Officer not to take any policy decision and make any

financial commitment until new committee is appointed. Therefore in the temple no developmental activities could be effected and for protecting the interest of the temple and its affairs requested for permission to elect the Chairman of Trustee Board.”

9. The MDB Commissioner further says that he had placed relevant materials before the Chief Electoral Officer in support of the statements made by him to that authority.

10. According to the MDB Commissioner, the Chief Electoral Officer authorised the District Collector, Malappuram to take appropriate decision in the matter. This is evidenced by Exhibit R2(f). Pursuant to that, the District Collector passed Exhibit R2(g) order on 7.5.2011 granting permission to elect the Chairman.

11. With the aforesaid materials now on record from the MDB files produced following earlier orders and supported by affidavit, the entire relevant facts to decide the case are on Board.

12. We are dealing with the interests of a temple and devotees. The authorities of the MDB, including the Commissioner have, essentially, the duty and obligation to act in trust. This obligation would assume more relevance when the hereditary trustee or the Board of Trustees, including the non-hereditary trustees, do not act in terms of the requirements of the Act and the other laws that apply to such institution. Therefore, we need to look into the entire materials now available, to consider whether we would exercise the discretionary writ jurisdiction under Article 226 of the Constitution of India to grant the relief sought for.

13. For one thing, the decisions referred to earlier as precedents touching on the quality of exercise of the authority under sub-sections (2) and (5) of Section 39 of the Act were rendered focusing on different aspects of law, including the right of the hereditary trustee to be heard and the requirement to reduce to writing, the reasons for making appointment of a non-hereditary trustee. In the case in hand, the fact of the matter remains that nobody projects himself as a hereditary trustee to challenge the impugned notification inviting applications for appointment to the vacancies of non-hereditary trustees. The petitioner in one writ petition is now the

solitary holder of the authority in relation to the management of the temple since he is the only one surviving from among the Board of Non-hereditary Trustees that was appointed by the MDB authorities. His challenge to the proposal to appoint other non-hereditary trustees is not founded on any legal right. He cannot assume the right of a hereditary trustee and insist that he ought to have been heard before any proposal to appoint other non-hereditary trustees. The petitioner in the other writ petition was himself an applicant, who lost his claim for re-appointment to the post which fell vacant by reason of efflux of time. He also does not have any legal right to challenge the notification. This being the situation, we see formidable substance in the submissions by senior Advocate G. Sreekumar that the need to appoint non-hereditary trustees for the temple is not germane for consideration here. Except when the issue is of appointing a non-hereditary trustee on the face of an available hereditary trustee, there is no need to hear on the issue as to the requirement of a non-hereditary trustee. The precedents referred to in paragraph No.5 above do not apply in cases where there is no hereditary trustee and the contest is as to appointment as against vacancies of non-hereditary trustees, that arise by efflux of time or otherwise.

14. Over-ruling all other contentions, what survives is plea that the selected persons are ineligible to be appointed as non-hereditary trustees as they, either do not possess the qualification prescribed, or are disqualified in terms of the notification and other relevant laws. The pointed allegation is that they are members of political parties or active workers and are also persons who do not have faith in temple worship. The private respondents have filed counter affidavit denying the allegations against them. Obviously, they can officiate only in terms of the requirement that they have faith in temple worship. This, again, is a matter within the purview of the Commissioner or the MDB, in the event it being shown that the persons selected and appointed do not conform to the standards in terms of the notification. If petitioners have any specific complaint about any private respondent in that regard, that can be brought to the notice of the Commissioner. In such event, he shall hear the complainants and the person whose appointment is criticized and decide on such matter, in accordance with law.

In the result, subject to what is stated in the immediately preceding paragraph, these writ petitions are dismissed. No costs.

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