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THE HON'BLE CHIEF JUSTICE
and
P.D.AUDIKESAVALU, J.

(Order of the Court was made by the Hon'ble Chief Justice)

A substantial challenge has been thrown by the petitioner, appearing in person, to G.O.(Ms.) No.188, dated October 6, 2021 issued by the Higher Education (E1) Department which refers to four colleges being opened with temple funds at Kolathur in Chennai, at Thiruchengodu Taluk in Namakkal, at Ottanchathiram in Dindigul and at Vilathikulam in Toothukudi.

2. According to the petitioner, merely because a policy statement was made on the floor of the Assembly by a Minister in the present government, the government has gone ahead with the proposal to divert funds from temples under the control of the Hindu Religious and Charitable Endowments Department. The petitioner relies on several provisions from the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and from, inter alia,



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the Rules framed thereunder, including the Functioning of the Board of Trustees Rules, to assert that the steps taken to implement the decision to open four colleges in a tearing hurry is completely flawed. According to the petitioner, the exercise could not have been undertaken without the trustees being put in place in the temples, since it is the trustees and the trustees alone who have full authority over the assets and properties of the relevant temple and are in control of the administration thereof.

3. The petitioner first refers to Section 36 of the Act to submit that the surplus funds from out of the offerings made to a particular temple may be used for the purpose of setting up an educational institution, but such a proposal must come from the trustees to the Commissioner and the Commissioner or the Department does not have the authority to invoke Section 36 of the Act for the purpose of setting up any educational institution. The further point that is made in such regard is that while such surplus funds may be applied for setting up an educational institution, a prominent subject must be pertaining to a course in Hindu religion and in

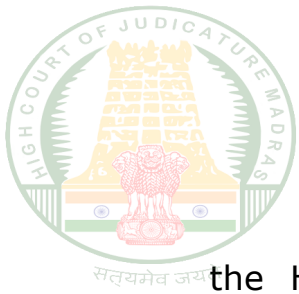


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respect of the denomination or sect pertaining to the relevant temple.

4. The petitioner next refers to Section 66 of the Act which permits the funds of a temple to be utilised, inter alia, for setting up an educational institution, but only if the purpose of the trust is incapable of being carried forward from the inception or is incapable to be continued any further by reason of the prevailing circumstances. The petitioner says that it cannot be the government's case that any temple funds are available with the HR & CE Department on account of the purposes of the temple or the trust created in respect thereof no longer being relevant or otherwise capable of being carried forward.

5. Learned Advocate-General, appearing for the State, refers to Section 97 of the Act and the funds thereunder, popularly known as the "Common Good Fund". It is the assertion of the petitioner that such fund has to be used primarily for the restoration, renovation and maintenance of other temples under the control of



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the HR & CE Department where adequate funds may not be available and it is only after such exercise is completed, to supplement the requirement of the lesser temples where the offerings may not be adequate, that any surplus left in the common good fund may be applied for the purpose of starting an educational institution indicated in Section 66 of the Act; and, again, a course pertaining to Hindu religious instruction would be mandatorily required as a part of the main stream curriculum of the educational institution and not as an incidental subject offered in the relevant educational institution.

6. The essence of the petitioner's submission is that since it is the admitted position that temples are bereft of trustees and no attempt has been made over the last 10 or 12 years to appoint any trustee, the duties of trustees, as being discharged by fit persons in certain temples, allow the fit person to undertake the day-to-day administration and running of the temple but, upon the appropriate interpretation of the statute, the fit person cannot be seen to have any right to alienate the property or the offerings at the temple or



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take any major policy decision pertaining to the temple. The petitioner says that the appointment of a fit person is only a stop-gap measure and it is only upon the board of trustees being constituted that the decision-making authority in the temple is born.

7. The petitioner has placed Section 7-A of the Act and has also relied on the Functioning of the Board of Trustees Rules, including the periodicity of meetings of trustees and the clear recognition in Rule 14 thereof that all matters relating to the administration of the religious institution "shall be decided at the meetings of the Board of Trustees."

8. There are certain things that need to be noticed at the outset. For a start, it is the undisputed position that over the last decade and more, steps may not have been taken to appoint trustees at the various temples under the control of the HR & CE Department. Indeed, it is also the undeniable position that the District Level Committees may not have been constituted as that is the first step that is to be taken before the trustees can be installed



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in individual temples. It is irrelevant as to whether the present political party was or was not in power over the last decade, it is the Government of Tamil Nadu which, through its HR & CE Department, was in control of the temples and such government had not taken steps for the purpose of installing trustees or constituting the District Level Committees.

9. Learned Advocate-General has referred to the steps now taken for the purpose of constituting the board of trustees in the temples. However, learned Advocate submits that in view of Section 47 of the Act, notwithstanding there being no trustees, the fit person is empowered to discharge all duties of administration that the trustees at the relevant temple would otherwise have been authorised to undertake.

10. If it is the admitted position that over the last decade and more trustees have not been in place, even if the submission on behalf of the State is taken at face value and the present exercise is seen to be the use of the common good fund under Section 97 of



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the Act instead of the more demanding procedure under Sections 36 and 66 thereof, it begs the question as to whether the transfer of the funds by the temples to the common good fund was voluntary. Section 97 speaks of the voluntary transfer of funds. What such word implies is that the administrators - the trustees of a particular temple - would plan out the activities of the temple, make provision for its maintenance, day-to-day running and then be satisfied that there are funds well in excess of what is necessary for the temple and its activities which may be, in full or part, made over to the common good fund, since such part of the money would not be necessary for the relevant temple's use even for its incidental purposes. This ascertainment of what would be the quantum of funds that may be voluntarily transferred by a particular temple to the common good fund could not have rightfully taken place for a decade or more that the temples have been lacking in trustees. With respect, the voluntary aspect of the transfer of funds is robbed if the transfer is at the behest of a fit person who is appointed by the Commissioner or at the behest of the government, since such person has to be seen to be under the control of the



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Commissioner or the government and, as a corollary, the transfer of the funds cannot be seen to be voluntary.

11. More importantly, as indicated earlier herein, a fit person temporarily discharges the duties of administration and the transfer of funds would be a much larger policy decision that a fit person ought not to take. The mere fact that a fit person may have continued for years and even a decade in the absence of government endeavor to install the rightful administration by the appointment of trustees, will not confer any greater right on a fit person than a mere caretaker discharging the administrative duties in the absence of the real administrator.

12. The substantial issues raised by the petitioner need to be addressed and assessed.

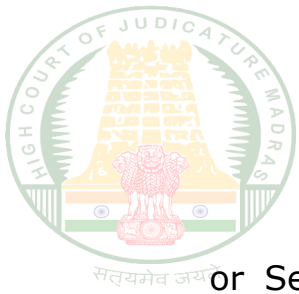
13. There are minor issues raised as to the speed in which the decisions were enforced and how the starting of four colleges has been bulldozed through without the basic formalities being complied



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with. According to the petitioner, the basic fees which are required to be paid by entities intending to start a private college have been exempted. Indeed, as to whether the property is fit or safe or secure to house students, even from the perspective of the fire services authority, may not have been looked into. These aspects have to be gone into and it is hoped that the safety and security of the premises are inspected by the appropriate authority in accordance with law before any training is attempted to be imparted at the four proposed colleges.

14. However, since the State says that steps have been taken for the admission and the starting of the colleges, it is only recorded that the further functioning of the colleges will abide by the result of the petition. Apart from the four colleges proposed at Kolathur in Chennai, at Thiruchengodu Taluk in Namakkal, at Ottanchathiram in Dindigul and at Vilathikulam in Toothukudi, the other proposed colleges will not be set up and no steps in such regard should be taken without the express previous leave of this court. In other words, educational institutions on the basis of Section 36 of the Act



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or Section 66 thereof or even Section 97 thereof should not be instituted at this stage till trustees at the relevant temples are first put in place and the leave of this court is obtained in such regard.

15. It is also noticed that at the four colleges which are now ready to open, B.B.A., B.Com. and other similar courses have been offered, without there be any regular course in religious instructions in Hindu religion. It will be a condition precedent to the four colleges opening that a stream of religious instructions in Hindu religion be introduced. If such a course is not introduced within a month of the college starting, the further functioning of the college cannot continue. It must be appreciated that however pious the intention may be to use perceived surplus funds for the purpose of education, these funds are out of offerings for a particular cause and, ordinarily, the cause must not be forgotten and the same must be espoused with a part of the funds, even though the larger sphere of education may also be addressed.

16. Counter-affidavits be filed by the respondents positively



W.P.No.24156 of 2021

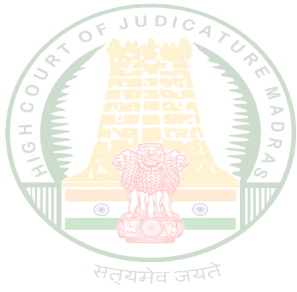
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within three weeks from date. Copies of the counter-affidavits should be forwarded to the petitioner within the same time. The petitioner will have a week thereafter to use a rejoinder to the counter-affidavits, copies whereof should be forwarded to the relevant respondents. Let the matter appear five weeks hence.

List W.P.No.13103 of 2020 along with this matter on December 20, 2021.

(S.B., CJ.) (P.D.A., J.)
15.11.2021

sasi



W.P.No.24156 of 2021

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THE HON'BLE CHIEF JUSTICE
and
P.D.AUDIKEVALU, J.
(sasi)

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