

Madras High Court

Madras High Court

Arulmigu Vaithianathaswamy ... vs The Hindu Religious And ... on 6 January, 2012

DATED 06.01.2012

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P. NO.1465 OF 2011

AND CONNECTED MISCELLANEOUS PETITIONS

Arulmigu Vaithianathaswamy Devasthanam

Rep.by its Hereditary Trustee

Sri-la-Sri Gurumaha Sannithanam of

Dharmapuram Adheenam

Vaitheeswarankoil

Seerkazhi Taluk

Nagapattinam District. .. Petitioner

Versus

1.The Hindu Religious and Charitable

Endowments Department

Rep. by its Commissioner

Chennai 600 034.

2.The Joint Commissioner

Hindu Religious and Charitable

Endowments Department

Mayiladuthurai.

3.Sri Vaithianathaswamy Thirukkcoil

Archakarkal Welfare Association

Rep.by its President

D.M.Vaithianatha Gurukkal

Vaitheeswarankoil

Seerkazhi Taluk

Nagapattinam District.

4.Sri Vaithianathaswamy Thirukkcoil

Employees Welfare Association

Rep.by its Honorary President

D.M.Vaithianatha Gurukkal

Vaitheeswarankoil

Seerkazhi Taluk

Nagapattinam District. .. Respondents

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of certiorari, calling for the records of the first respondent in Rc.No.64864/2010/H3 dated 29.11.2010 and of the second respondent in Rc.No.7925/2009/B2 dated 18.01.2011 and quash the same in so far as they are contrary to the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

For Petitioner : Shri.R.Krishnamoorthy

Senior Counsel

for Shri.S.Sounthar

For Respondents-1 & 2 : Shri.V.S.Sethuraman

Addl. Advocate General

Asst. by Shri.S.Kandasamy

Special Government Pleader (HR&CE)

For Respondent-3 : Shri.S.Doraisamy

For Respondent-4 : Shri.T.L.Ram Mohan

Senior Counsel

for Shri.A.V.Arun

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O R D E R

This Writ Petition is a third round of litigation between the priests and the employees on the one hand and Arulmigu Shri Vaithianathaswamy Devasthanam represented by its Hereditary Trustee on the other hand over the fixation of just salary payable. It is rather ironic that the priests who take the prayers from the public to the Lord almighty have come before the Court of law with their own prayers, although as party respondents this time.

Facts in brief:

2. Everything that exists in the world has got a history in it. A Temple with its deities is no exception. Arulmigu Shri Vaithianathaswamy Temple situated at Vaitheeswarankoil is built by the great Chola Kings of ancient times. It has been renovated over the years by the subsequent rulers of the Tamil country. The Temple has Lord Shiva as a presiding deity. During the British rule and more particularly in the year 1842 the then Government had handed over the management of the Temple to the Pandarasannadhi of Dharmapuram Adheenam. As they were allowed to continue over the years through the administration of the Temple, the successive Adheenams were recognised as Hereditary Trustees. The Madathiapathy of Dharmapuram Adheenam has been recognised as Hereditary Trustee as per the scheme framed by this Court.

3. When an Executive Officer was appointed by the Hindu Religious and Charitable Endowments Board, the same was put into challenge by the Dharmapuram Adheenam. Ultimately, the issue was concluded by the decision of the Honourable Apex Court in SRI LA SRI SUBRAMANYA DESIGA GNANASAMBANDA PANDARASANNADHI vs. THE STATE OF MADRAS [1966 II MLJ 1]. The Honourable Apex Court while approving the scheme framed was pleased to observe as follows: &quot;7....It is brought to our notice that in 1959, the Madras Hindu Religious and Charitable Endowments Act (Act XXII of 1959) was passed by the Madras legislature. Under Section 45 thereof, the Commissioner is given a plenary power to appoint an Executive Officer to any temple and, therefore, it is argued, this Court shall not interfere with the clause of the scheme providing for the appointment of an Executive Office to the temple in question. The said Act was passed subsequent to the filing of the suit. We are deciding this appeal on the basis of the circumstances prevailing in the year 1951 when the suit was filed. It may be that under the New Act, the Commissioner has higher powers than he had under the 1951 Act and subsequent events may call for the exercise of those powers. Our judgment will not preclude the Commissioner to take any action, under the new Act as the circumstances demand. With these observations we shall proceed to modify the scheme framed by the High Court.&quot; Accordingly, the scheme framed by this Court was modified.

4. The petitioner being the Hereditary Trustee continues to be in charge of the administration. It is not in dispute that Arulmigu Shri Vaithianathaswamy Koil is a &quot;Temple&quot; defined under Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as &quot;H.R.&C.E. Act&quot;). It is also a &quot;religious institution&quot; as defined under Section 6(18) of the H.R.&C.E. Act and therefore all the provisions and rules made under would be applicable to it. It is also not in dispute that the petitioner Temple comes within the purview of Section 46(iii) of the H.R.&C.E. Act. These facts are not in dispute and in fact the learned senior counsel appearing for the petitioner also does not dispute the said position.

5. Now the controversy involved in this case is the power of the official respondents over the fixation of salary payable to the employees of the Temple. The Government of Tamil Nadu passed an order in G.O.Ms.No.257, Tamil Development Culture and Religious Department, dated 10.06.1998 fixing the scale of pay payable to the employees of various temples. By the said Government Order, the earlier fixation made was reviewed in pursuance to the recommendations of the four member committee submitted by way of its report. Seeking to implement the said Government Order, a Writ Petition was filed by 41 priests in W.P.No.21916 of 2009. This Court by an order dated 27.10.2009 directed the respondent No.1 to consider the claim of the petitioners therein to pay the salary as per the Government Order passed in G.O.Ms.No.257, Tamil Development Culture and Religious Department, dated 10.06.1998. Challenging the said order of the learned single Judge, an appeal was preferred by the petitioner herein in W.A.No.1862 of 2009. By the order dated 15.03.2010, the

Honourable Division Bench has held as follows: &quot;4.In these circumstances, without going into the merits, the writ appeal is allowed and the order of the learned single Judge is set aside. The writ petition shall be placed before the learned single Judge for deciding the matter after hearing the third respondent/appellant. The fact that notice was issued by the first respondent Commissioner, HR&amp;CE to the appellant/third respondent before passing the order, dated 16.02.2010 does not weigh with us since the appellant had clearly stated that this appeal is pending consideration and, therefore, they did not make any submission before the Commissioner and in fact according to the appellant, this Temple is governed by the scheme. We are not to be understood as giving a finding on merits. As stated above, the only reason as to why the order of the learned single Judge is set aside is because the appellant/third respondent had no opportunity to make their submissions and had not been heard. Consequently, the connected miscellaneous petition is closed. There will be no order as to costs.&quot;

6. Another Writ Petition was filed by the very same petitioners in the earlier Writ Petition, seeking a direction to the first respondent to pay the salary as per the Government Order passed in G.O.Ms.No.257, Tamil Development Culture and Religious Department, dated 10.06.1998. This Court after hearing the petitioner herein has passed an order in W.P.No.21916 of 2009 dated 30.09.2010 directing the first respondent to look into the matter after hearing both the petitioner and the private respondents herein. Thereafter by the impugned proceedings dated 29.11.2010 the first respondent was pleased to hold that the Government Orders are applicable to the case of the petitioner and therefore the petitioner will have to send the revised scale of pay of the employees to the approval of the respondent No.2. A further direction was given to fix the salary to make an application for filling up the unfilled posts and also send a separate list of those employees who did not find a place in the salary list by fixing their salary. In pursuance to the same, the second respondent sent a communication dated 18.01.2011 asking the petitioner to comply with the same. Thereafter, the petitioner has come forward to file this Writ Petition to challenge the impugned proceedings of the first respondent dated 29.11.2010 and the consequential order of the second respondent dated 18.01.2011.

Submissions of the petitioner:

7. Shri.R.Krishnamoorthy, learned senior counsel appearing for the petitioner made a primary submission that the respondents 1 and 2 do not have the power or authority to fix the salary payable to the employees of the petitioner. Reliance has been made by the learned senior counsel on Section 55 of the H.R.&amp;C.E. Act read with Rule 14 of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. The learned senior counsel further submitted that the Government Orders relied upon by the respondents 1 and 2 are contrary to the provisions of the H.R.&amp;C.E. Act particularly Section 55 read with Rule 14 of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. As the respondents do not have the power to fix the salary, the order impugned will have to be set aside as the one without jurisdiction and authority. The petitioner is a senior grade institution and therefore the ratio applied to the non-senior grade institution shall not be made applicable to it. The fact that the priests are receiving a portion of the contribution made by the general public has not been taken into account, and the respondent No.1 has taken into account the gold donated over the years for the purpose of income of a particular year which is impermissible in law. The expenditure to be made by the petitioner has not been taken into account. It is not as if the petitioner is against fixing the new scale of pay to its employees. As stated in the reply supplemental affidavit, the petitioner is ready and willing to pay the scale of pay for the Archakars and employees by taking into consideration of the probable income they would earn by way of &quot;Thattu Kasu&quot;, Kattalai, Archanai and Abhishakam etc. For that purpose this Court has to appoint a retired Judge of the Honourable Supreme Court or this Court whose decision the petitioner would accept and implement. The learned senior counsel also submitted that there is no necessity to challenge the Government Orders relied upon by the first respondent, as they would not take away the power conferred on the petitioner. In support of the above said submissions, the learned senior counsel has made reliance upon the following decisions: &quot;T.KUMARESAN vs. THE COMMISSIONER, HINDU RELIGIOUS &amp; ENDOWMENT DEPARTMENT, NUNGAMBAKKAM HIGH ROAD, CHENNAI 34 AND ANOTHER [2000 (I) CTC 78]

T.N.HOUSING BOARD vs. N.BALASUBRAMANIUN AND OTHERS [(2004) 6 SCC 85]

ANDHRA PRADESH PUBLIC SERVICE COMMISSION vs. BALOJI BADHAVATH AND OTHERS [(2009) 5 SCC 1]

ASSISTANT COMMISSIONER/EXECUTIVE OFFICER, ARULMIGU VANA BADRAKALIAMMAN TEMPLE, THEKKAMPATTAI, METTUPALAYAM TALUK, COIMBATORE DISTRICT [2000-2-L.W.250]&quot;

Submissions of the respondent Ns.1 & 2:

8.Shri.V.S.Sethuraman, learned Additional Advocate General assisted by the learned Special Government Pleader (H.R.&C.E.) Shri.S.Kandasamy submitted that admittedly the petitioner is an Hereditary Trustee and the petitioner Temple comes under the purview of Sections 6(20) and 6(18) of the H.R.&C.E. Act. Therefore, the petitioner Temple is amenable to the directions that can be issued under Section 27 of the H.R.&C.E. Act. The Government Orders are issued in exercise of the power under Section 116(2) of the H.R.&C.E. Act. Sections 45 and 58 of the H.R.&C.E. Act are not applicable only to the &quot;Maths&quot; and not to the public temples like that of the petitioner. The first respondent has taken into consideration of the relevant materials while passing the order impugned. In support of the said contention, reliance has been made on the Government Orders passed apart from a decision of this Court rendered in W.P.(Md) No.5186 of 2005 dated 24.11.2011.

Submissions of the respondent No.3:

9.Shri.S.Doraisamy, learned counsel appearing for the third respondent submitted that what has been paid to the employees is a pittance and even the top most priest is receiving less than Rs.10,000/- even as per the Government Order. All the employees are receiving less than Rs.3,000/- at present. From the list produced, the learned counsel submitted that some of the employees are receiving less than Rs.1,000/-. The learned counsel based upon the statement filed submitted that Archakars are performing a divine duty and they cannot be allowed to live in poverty and penury. They are entitled to live with dignity and therefore, the Writ Petition will have to be dismissed.

Submissions of the respondent No.4:

10.Shri.T.L.Ram Mohan, learned senior counsel appearing for the fourth respondent submitted that the Government Orders are persuasive in nature. The basis of the payment has been fixed under the Government Orders and the arguments of the petitioner would not stand to scrutiny in pursuant to the notification issued by the Government by the introduction of Rule 5-A of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 which stipulates a schedule of establishment for every religious institution. The said rule which has been introduced in exercise of the power under Section 116 (2) of the H.R.&C.E. Act. Section 86 of the Act provides power to the respondents to approve the budget. Therefore, the combined reading of the provisions of the Act together with rules would clearly demonstrate the power available with the respondents by way of guidelines. The learned senior counsel also submitted that the amount payable to the Archakars and the employees is less than the minimum wages payable. When that is the position a duty is imposed upon the respondents to pay the minimum wages. In support of the said contentions, the learned senior counsel has made reliance upon the following judgment: &quot;SOUTHERN INDIA MILLS' ASSOCIATION vs. STATE OF TAMIL NADU [(2010) 1 MLJ 1115]&quot;

Analysis:

11.This Court while dealing with the interlocutory application has passed an order in M.P.Nos.2, 3, 4 and 6 of 2011 dated 26.04.2011 and 29.04.2011 which is extracted hereunder:

“After hearing the arguments advanced by Mr.K.Doraisami, learned Senior Counsel appearing for the petitioner, Mr.K.Ramasamy, learned Additional Advocate General, assisted by Mr.T.Chandrasekaran, learned Special Government Pleader appearing for respondents 1 and 2 and Mr.S.Doraisamy, learned counsel for the third respondent and on perusal of the various documents filed, I am of the view that an interim arrangement must be made for the purpose of payment of salaries to Gurukals for the period from January, 2011 till final orders are passed in the writ petition.

2. Even though it is stated that there are 136 employees, it is admitted that the number of Gurukals, who are working in the said temple, viz., Arulmighu Vaithianathaswamy Devasthanam, is sixteen as per the schedule. It is seen that the said Gurukals have been paid Rs.645/- per month. On a direction from this Court, the petitioner/Trust has filed necessary documents accepting to increase the said salary payable as an interim measure from Rs.645/- to Rs.2,200/- per month. It is also stated that in addition to the above said amounts, each of the Gurukals are entitled to the following benefits: (i)Rs.1/- in respect of each of Ashtothara Archana ticket stated to have been sold to the tune of Rs.4,16,214/- in the Fasli year 1419;

(ii)Rs.5/- in respect of each of Sahasranama Thirisathi Archana Ticket stated to have been sold to the tune of Rs.5,000/- in the Fasli year 1419;

(iii)Rs.50/- in respect of 100 tickets of the Shanmuga Archana stated to have been sold to the tune of Rs.5,000/- in the Fasli year 1419; and

(iv)In respect of each Abhishekam the Gurukul will receive the amount directly from the devotees, however in respect of each Abhishekam, an amount of Rs.11/- shall be paid to the petitioner/Devasthanam and for the Fasli year 1419, they have performed 5364 Abhishekams costing around Rs.25/- per Abhishekam, amounting in all to Rs.1,34,100/-.

3. The Hindu Religious and Charitable Endowments Department would submit that the Gurukals are also entitled to salary on a par with other staff and it is stated that each of the Gurukul is entitled to Rs.6,621/- as salary per month and it is also stated by Mr.T.Chandrasekaran, learned Special Government Pleader that the same is being paid in respect of other temples.

4. On a perusal of the entire records, it is clear that the payment of salary to the Gurukals depends upon the income which is received by the temple. As per G.O.Ms.No.257, Tamil Development-Culture and Endowments Department, dated 10.6.1998, 30% of the income received by the temple can be spent towards salary. However, these are matters which are ultimately to be decided in the writ petition. However, I am of the view that a competent person should be appointed to go into all these aspects and file a detailed report so as to arrive at a just conclusion.

5. Considering the above said facts and circumstances of the case, as an interim measure, I direct the petitioner/Trust to pay to each of the Gurukals as per the schedule an amount of Rs.3,500/- per month, which shall be payable from 1.1.2011 till the disposal of the writ petition. This amount shall be in addition to the amounts stated supra, viz., (i)Rs.1/- in respect of each of Ashtothara Archana ticket stated to have been sold to the tune of Rs.4,16,214/- in the Fasli year 1419;

(ii)Rs.5/- in respect of each of Sahasranama Thirisathi Archana Ticket stated to have been sold to the tune of Rs.5,000/- in the Fasli year 1419;

(iii)Rs.50/- in respect of 100 tickets of the Shanmuga Archana stated to have been sold to the tune of Rs.5,000/- in the Fasli year 1419; and

(iv)in respect of each Abhishekam the Gurukul will receive the amount directly from the devotees, however in respect of each Abhishekam, an amount of Rs.11/- shall be paid to the petitioner/Devasthanam and for the

Fasli year 1419, they have performed 5364 Abhishekams costing around Rs.25/- per Abhishekam, amounting in all to Rs.1,34,100/-. The said arrangement is made without prejudice to the contentions of the parties and subject to the result of the writ petition and purely as a temporary measure and the petitioner/Trust shall pay the above said amount and arrears from 1.1.2011 till date within four weeks from the date of receipt of a copy of this order.

6. Considering the importance of the issue involved, viz., the salary to be paid not only to the Gurukals, but also to the employees, based on the nature of the temple and income, etc. as per the G.O.Ms.No.257, Tamil Development-Culture and Endowments Department, dated 10.6.1998, I appoint Hon'ble Mr.Justice N.V.Balasubramanian (Retired Judge) as a Commissioner to go into the entire issue relating to the salaries to be paid to the employees, including the Gurukals, based on the above said government order and the Commissioner shall file a report by 4.7.2011. The Commissioner appointed shall be assisted by the officials of the Hindu Religious and Charitable Endowments Department. A remuneration of Rs.50,000/- per month shall be paid to the Commissioner, apart from the incidental expenses, by the petitioner. It is made clear that the Gurukals shall perform their functions to the satisfaction of the devotees as well as the petitioner/Trust, without causing any hindrance. It is needless to state that all other objections are left open to be decided in the writ petition.

Post the writ petition on 4.7.2011.&quot;

&quot;This writ petition is listed today under the caption 'for being mentioned' at the instance of the learned senior counsel for the petitioner to modify the order dated 26.04.2011 passed by this Court in the above writ petition thereby extend the benefits conferred under the said order to Gurukals to the other staff working in the temple.

2.Heard the counsel on either side. The learned senior counsel appearing for the petitioner fairly submitted that, as submitted by the petitioners by way of suggestion, after the order dated 26.04.2011 passed by this Court, even in respect of other staff, enhanced amount will be paid as per the statement made earlier by the petitioner.

3.In the light of the submission made by the learned senior counsel for the petitioners, it is made clear that the benefit conferred under the order dated 26.04.2011 shall also be extended to other staff only to the extent it is accepted by the petitioners in the proposal working in the temple and this order is passed as an interim measure and without prejudice to the contentions to be raised by both sides in the main writ petition.

4.Post the writ petition after vacation.&quot;

12.In pursuant to the orders of this Court, a retired Judge of this Court was appointed to go into the issue and he inturn submitted a report as the learned Commissioner, dated 27.09.2011. The learned Judge heard all the parties and made several suggestions. The learned Judge has also held that there is no dispute about the figures arrived at. Before the learned Judge it was contended by the petitioner that the income has to be arrived at after deducting the expenses. A further contention has been raised that the sale proceeds of gold and land are capital receipts. A factual finding has been given by the learned Judge that there is no evidence to establish the allegation that the members are receiving any plate collection, although it is not possible to take such a view that no amount is collected towards plate collection. There is nothing on record to show the raising of any objections of the parties over the report of the learned Commissioner.

13.Rule 5-A of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 has come into effect from 28.06.2010. For the better appreciation of all the issues involved it is necessary to extract the said provision: &quot;5-A.SCHEDULE OF ESTABLISHMENT FOR EVERY RELIGIOUS INSTITUTION.- (1) Every religious institution shall have a schedule of Establishment duly prepared by the Executive authority of such institution and approved by the Commissioner. The Schedule of establishment

shall contain the details of permanent and temporary posts, both outdoor and indoor, in all categories, with details of sanction order issued by the Commissioner and the grades of pay and other allowances admissible to such posts. The Executive Authority shall not alter the schedule without the previous permission of the Commissioner; (2) Every religious institution shall limit the expenditure on salaries and establishment within the percentage norms as may be fixed by the Government from time to time.

(3) No new posts, permanent and temporary shall be created or filled up in any religious institution without the sanction of the Commissioner. If any such post or posts are created without the sanction of the Commissioner, the expenditure on account of such post shall be deemed to be unauthorised one and liable for surcharge proceedings under the provisions of the Act. (4) Every post in a religious institution shall be sanctioned taking into account the income of the religious institution. The expenditure on salaries and establishment shall be met from the income of the religious institution.&quot;

14.A perusal of the above said provision would make it clear that it mandates upon every religious institution to have a schedule of establishment. While it is a duty of the petitioner to prepare such a schedule of establishment, the same has to be approved by the first respondent. The schedule also includes permanent and temporary posts along with the grounds of pay and other allowances admissible to such posts. It is important to note that Rule 5-A of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 places fetters on the power of the petitioner to the effect that it is not open to it to alter the schedule without the prior permission of the learned Commissioner. Therefore, Rule 5-A of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 clearly provides for such a power. When the petitioner cannot alter the schedule without the prior permission of the first respondent and the schedule requires approval, it cannot be said that there is no power available with it. This position is made clear by looking into sub-clause 2 of Rule 5-A of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. Sub-clause 2 places further embargo on the petitioner regarding the limit of the expenditure on salaries and establishment within the prescribed percentage norms. Now this provision makes it clear that norms can be fixed by the Government in so far as the limit of expenditure of salaries and establishment are concerned. This is what that has been exactly done by the Government in the various Government Orders.

15.It is no doubt true that the Government Order passed earlier in G.O.Ms.No.257, Tamil Development Culture and Religious Department dated 10.06.1998 is prior to the amendment. However, we are not concerned with the Government Order as such but with the power of the first respondent in imposing the percentage norms. The earlier Government Order has not been put into challenge and the impugned order has not been passed merely based upon the said order but on the subsequent orders which are also not challenged before this Court. Therefore, this Court is of the view that it is very well open to the Government which unfortunately is not a party before this Court, to fix the norms regarding the expenditure of salary and establishment. When the Government can limit the expenditure such a power would also include the guidelines for fixing the salary.

16.Section 116(2) of the H.R.&C.E. Act confers a wide range of powers to the Government. The power of the Government under the said Section to make rules is rather exhaustive. The following clauses of the said provision are extracted hereunder: &quot;116(2).....

(vii)the budgets, reports, accounts, returns or other information to be submitted by trustees;

(x)the proper collection of the income of, and the incurring of expenditure by, religious institutions;

(xi)the custody of the moneys of religious institutions, their deposit in, and withdrawal from banks, and the investment of such moneys;



(xii)the custody of jewels and other valuables and documents of religious institutions and the conditions and restrictions subject to which the jewels and other valuables of religious institutions may be disposed of;

(xii-a)the manner in which, the persons (including the State Trading Corporation) to whom, the conditions and restrictions subject to which, movable properties of any religious institution including human hairs and other articles received as offerings in the religious institutions, shall be sold or otherwise disposed of;

(xiv)the manner in which the accounts of religious institutions shall be audited and published, the time and place of audit and the form and contents of the auditor's report;

(xv)the method of calculating the income of a religious institution for the purpose of levying contribution and the rate at which it shall be levied;

(xxv)the grant of pensions or gratuities to officers and servants of the Board who retired before the 30th September 1951;

(xxvi)the grant of gratuities to the heirs of deceased officers and servants of the Board including those who had retired before the 30th September 1951;"

Therefore, a perusal of the above said Section together with the amendment made by way of introduction of Rule 5-A of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 clearly exemplifies the power available with the Government.

17.Chapter VIII of the H.R.&C.E. Act deals with Budgets, Accounts and Audit. Section 86 of the H.R.&C.E. Act deals with the power of the respondents 1 and 2 to deal with the budgets. The expenditure of the petitioner will have to be ratified by the respondents 1 and 2 if it is beneficial or necessary to the institution. The question of necessity will have to be seen as a whole by taking into consideration the employees as well. This is for the reason that the performance of the employees would enhance the reputation of the petitioner. It is the duty of the petitioner to maintain the reputation of the Temple which can be done only through its employees. Chapter IX of the H.R.&C.E. Act deals with Finance. Under Section 92 a religious institution has to pay an annual contribution to the Government. The said account will have to be made in proportion to the income. Therefore what is the actual income of a particular religious institution will have to be determined by the respondents 1 and 2 alone.

18.Section 55 of the H.R.&C.E. Act deals only with the appointment of office-holders and servants in religious institutions. This Court is not concerned with the appointments as such. Section 58 of the H.R.&C.E. Act deals with the fixation of standard scales of expenditure and the same is extracted hereunder.

"58.Fixing of standard scales of expenditure.- (1) The trustee of a religious institution shall submit to the Assistant Commissioner if the institution is not included in the list published under section 46 and to the Commissioner if the institution is so included, within three months from the date of the commencement of this Act, or the date of the inclusion of the institution in the list aforesaid or within such further time as may be allowed by the Assistant Commissioner or the Commissioner, as the case may be, proposals for fixing the dhittam or scale of expenditure in the institution, and the amounts which should be allotted to the various objects connected with such institution or the proportion in which the income or other property of the institution may be applied to such objects :

Provided that this sub-section shall not apply to any institution in respect of which proposals have been submitted to the Assistant Commissioner or the Commissioner, as the case may be, before the date of the commencement of this Act.

(2) The trustee shall publish such proposals as the premises of the institution and in such other manner as may be required by the Assistant Commissioner or the Commissioner, as the case may be, together with a notice stating that, within one month from the date of such publication, any person having interest may submit objections or suggestions to the Assistant Commissioner or the Commissioner.

(3) After the expiry of the said period, the Assistant Commissioner or the Commissioner shall, after considering any objections and suggestions received, pass such order as he may think fit on such proposals, having regard to the established usage of the institution and its financial position, and a copy of the order shall be communicated to the trustee.

The order of the Assistant Commissioner or the Commissioner shall be published in the prescribed manner.

(4) Against an order passed by the Assistant Commissioner under sub-section (3), the trustee or any person having interest may, within one month from the date of the receipt of the order by the trustee, appeal to the Joint or Deputy Commissioner and if the trustee or such person is aggrieved by the order of the Deputy Commissioner, he may, within one month from the date of the receipt of such order, appeal to the Commissioner.

(5) The trustee shall scrutinize the particulars of dhittam or scale of expenditure every three years and submit to the Assistant Commissioner or the Commissioner, as the case may be, proposals for altering the dhittam or scale of expenditure and the provisions of sub-sections (2), (3) and (4) shall apply in relation to the alteration of such dhittam or scale of expenditure as they apply, in relation to the fixing of dhittam or scale of expenditure :

Provided that the Assistant Commissioner or the Commissioner may, at any time on its own motion for reasons to be recorded in writing, direct the trustee to alter the dhittam or scale of expenditure and the procedure for such alteration shall be the same as laid down in this section.&quot;

19.A perusal of the above said Section would show that it is mandatory on the part of the petitioner to submit a proposal for fixing a standard scale of expenditure. It also provides for giving objections to the respondents 1 and 2. Thereafter, the power lies on the respondents 1 and 2 to pass appropriate orders. Therefore under the above said provisions, the respondents 1 and 2 have the power to pass appropriate orders over the expenditure. Similarly, the submission of Budgets, Deposits, Accounts, Returns or other Information Rules which has been introduced in exercise of the power under Section 116 sub-clause 2 of the H.R.&C.E. Act stipulates that the respondents 1 and 2 have got the power to modify the budget submitted.

20.A perusal of the order impugned would show that the petitioner was asked to send a revised proposal. The said order has been passed by categorizing the petitioner as a non-senior grade temple in accordance with the Government Orders. The Government Orders passed by the Government are only guidelines for fixing the outer limit of the salary payable by a religious institution coming under the purview of the Act. To that extent it cannot be said that they are without power or authority. As discussed above Rule 5-A of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 provides for such a power. The question as to whether the petitioner Temple can be classified as a senior grade Temple or a non senior grade Temple is one of fact and as it is seen from the counter affidavit, if the case of the petitioner is accepted then more salary has to be paid. However, this Court is not willing to go into the said issue as it is for the second respondent to go into, when the petitioner submits its proposal. The said proposal will have to be made and decided in the light of the observation of this Court and in the light of the factual findings given by the learned Commissioner.

Element of Fairness:

21. The final question to be considered in this Writ Petition is as to whether the action of the petitioner is just and fair. While exercising the power under Section 226 of the Constitution of India, this Court is concerned with the element of fairness. Admittedly, the records produced by the learned counsel for the third respondent would show that what has been given to the employees is nothing but a pittance. The petitioner itself in the supplemental affidavit filed as stated as follows: &quot;5. His Holiness the Adheena Kartha is willing for this Honourable Court appointing a retired Judge of the Honourable Supreme Court or this Honourable Court to conduct enquiry, to ascertain the income and expenditure and to fix proper and reasonable scale of pay for the Archakars and the employees after taking into consideration the probable income of the Archakars by way of &quot;Thattu Kasu&quot;, Kattalai, Archanai, Abishakam, etc. The petitioner will co-operate with the Honourable Judge who may be appointed by this Honourable Court for amicably resolving the issue relating to scale of pay. After getting the report of the Honourable Judge so appointed, this Honourable Court may be pleased to pass suitable orders which will be binding on all the parties to the above Writ Petition.&quot;

22. Therefore, this Court has got no difficulty in holding that there is no element of fairness in the action of the petitioner in paying a meager sum of few thousands of rupees and in some cases less than Rs.1,000/- over the years. When the employees of the petitioner are placing the grievance of the public to the God almighty they should not suffer in the performance of their duty. Their grievance should be addressed in their own interest and also in the interest of the petitioner as well. Considering the element of fairness which has been held by the Honourable Apex Court in ASHA SHARMA vs. CHANDIGARH ADMINISTRATION AND OTHERS [(2011) 10 SCC 86] as follows: &quot;14. Action by the State, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive action still such action, especially if it could potentially affect the rights of the parties, should be just, fair and transparent. Arbitrariness in State action, even where the rules vest discretion in an authority, has to be impermissible. The exercise of discretion, in line with principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. The standard of fairness is also dependant upon certainty in State action, that is, the class of persons, subject to regulation by the Allotment Rules, must be able to reasonably anticipate the order for the action that the State is likely to take in a given situation. Arbitrariness and discrimination have inbuilt elements of uncertainty as the decisions of the State would then differ from person to person and from situation to situation, even if the determinative factors of the situations in question were identical. This uncertainty must be avoided.&quot;

23. In the result, the Writ Petition is disposed of, with the following directions:

(i) The petitioner is directed to submit its proposal to the respondent No.2 by fixing the salary of the employees. While doing so, it is open to the petitioner to contend that it is a senior grade Temple, with relevant materials. The petitioner can also place the materials by relying upon the report of the learned Commissioner apart from giving its objections to it.

(ii) The percentage ratio fixed for different grades of Temples in various Government Orders by the Government is hereby upheld in the light of the discussions made above. However, it is made clear that any salary to be fixed for the employees cannot go beyond the percentage ratio and should be in accordance with Rule 5-A of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964.

(iii) In so far as the contentions raised by the petitioner before the learned Commissioner to the effect that the gold received is a capital receipt and therefore, the same cannot be included in the income, the same is rejected as this Court does not find any difference between the contribution made by the general public in cash or kind. However, the receipt of the gold and its conversion should be treated as income of the petitioner corresponding to the fasli year alone.

(iv) The contention of the petitioner before the learned Commissioner that the income will have to be arrived at only after deducting the expenditure cannot be accepted except to the extent of the positive finding given by

the learned Commissioner in his report. It is trite law that income is different from expenditure. Hence, it is not open to the petitioner to contend that it is entitled to spend all the income and whatever that is left alone should be treated as income for the purpose of fixing the salary.

(v) While considering the proposal to be submitted by the petitioner, the second respondent is directed to consider the entire materials including the objections raised before the learned Commissioner. The second respondent will have to consider the nature of grade that would be applicable in the case of the petitioner by taking note of the relevant materials.

(vi) The petitioner shall submit the proposal, within a period of four (4) weeks from the date of receipt of a copy of this order.

(vii) The second respondent while considering the proposal to be submitted by the petitioner will have to decide the same in accordance with law, the directions issued by this Court and by taking into consideration of the report of the learned Commissioner. The second respondent will have to fix the salary on the facts available.

(viii) The second respondent is directed to pass appropriate orders, within a period of eight (8) weeks from the date of receipt of the proposal from the petitioner. In the event of making any alterations, omissions or additions in the proposals to be submitted by the petitioner, the respondent No.2 has to issue a notice to the petitioner before doing so. Till the entire exercise is over, the interim arrangement entered into in pursuant to the orders of this Court will have to be continued by the petitioner.

Since the arguments have been made and heard in full, the additional grounds raised by the petitioner in M.P.No.7 of 2011 is ordered. No costs. Consequently, connected miscellaneous petitions are closed.

sri

To

1.The Commissioner

Hindu Religious and Charitable

Endowments Department

Chennai 600 034.

2.The Joint Commissioner

Hindu Religious and Charitable

Endowments Department

Mayiladuthurai.

3.The President

Sri Vaithianathaswamy Thirukkoil

Archakarkal Welfare Association

D.M.Vaithianatha Gurukkal

Vaitheeswarankoil

Seerkazhi Taluk

Nagapattinam District.

4.The Honorary President

Sri Vaithianathaswamy Thirukkoil

Employees Welfare Association

D.M.Vaithianatha Gurukkal

Vaitheeswarankoil

Seerkazhi Taluk

Nagapattinam District