In the High Court of Judicature at Madras

Reserved on : 21.6.2023	Delivered on : 26.6.2023

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.3997 of 2018 &
WMP.Nos.4916 and 4948 of 2018 & 12136 of 2022

Muthu Subramania Gurukkal ...Petitioner

Vs

1.The Commissioner, Hindu Religious and Charitable Endowment Department, Nungambakkam High Road, Chennai-34.

2.The Assistant Commissioner, Hindu Religious and Charitable Endowment Department, Office of the Assistant Commissioner, Salem-636001.

3.The Executive Officer, Sri Sugavaneswarar Swamy Temple, Salem-636001. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in reference to the impugned notice dated 18.1.2018 on the file of the respondents 2 and 3, quash the same and consequently

direct the respondents forbearing them from initiating any further proceedings in pursuance to the impugned notice dated 18.1.2018.

For Petitioner : Mr.R.Singaravelan, SC for
Mr.M.Muruganantham

For Respondents : Mr.N.R.R.Arun Natarajan,
Special Government Pleader (HR&CE)

ORDER

The above writ petition has been filed by the Sthanikam of Sri Sugavaneswarar Swamy Temple, Salem, assailing the advertisement dated 18.1.2018 issued by respondents 2 and 3 herein calling for applications to fill up the position of Archakas/Sthanikam at Sri Sugavaneswarar Swamy Temple, Salem.

2. The case of the petitioner is as follows :

(i) The petitioner hails from the family of Sivachariyars and their family has been performing the poojas from time immemorial and the position of Sthanikam was occupied as a hereditary right. Accordingly, after his grandfather, the petitioner took over the position as Sthanikam and was performing the poojas.

(ii) The customs and usages were the basis for occupying the position as Sthanikam and every time when there is a change in the Sthanikam, a letter of intimation used to be give to the Authorities, who also granted approval subsequently.

(iii) The grievance of the petitioner is that respondents 2 and 3, all of a sudden, issued the impugned advertisement calling for applications for appointment to the position of Archakas/Sthanikam of the subject temple and that the impugned advertisement infringes upon the hereditary right of the petitioner and others, who are rendering their services as per the customs and usage in the line of succession from time immemorial. Accordingly, the impugned advertisement has been put to challenge in the above writ petition.

3. When the writ petition came up for hearing on 08.6.2023, this Court passed the following order :

> *"The subject matter of challenge in this writ petition pertains to the notification issued by the Executive Officer of Sri Sugavaneswarar Swamy Temple, Salem dated 18.01.2018 calling for applications to fill up the post of Archagar/Sthanigar.*

2. Mr.R.Singaravelan, learned Senior Counsel appearing on behalf of the petitioner urged the following points.

(a) The temple in question is an Agamic temple and hence any appointment of Archagar/Sthanigar can be done only as per the customs and usage.

(b) In order to substantiate the above submission, the learned Senior Counsel specifically relied upon the register maintained under Section 38 of the Hindu Religious and Charitable Endowments Act (HR & CE Act) dated 07.08.1933, wherein it has been specifically mentioned that there is a hereditary right to perform Abhishegam, Archana, Deeparadhana, Pooja etc., and the person performing the same is not entitled for any maanyam. The second document that was relied upon by the learned Senior Counsel was the judgment in O.S.No.207 of 1946 passed by the District Munsif, Salem pertaining to the same temple, wherein issue No.1 specifically dealt with the customs and usage and the right of the person under the custom and it was held that nothing in the Madras Hindu Religious Endowments Act should affect the rights of those persons who are otherwise entitled under the customs. The third document that was relied upon by the learned Senior Counsel is the Board's order dated 09.12.1946 wherein the Board has held that there are no powers under the Hindu Religious and Charitable Endowments Act to alter or modify or cancel the rights acquired and enjoyed by the concerned person due to long standing usage and custom.

(c) The learned Senior Counsel made it clear that the petitioner is not attacking the impugned notification

by claiming any hereditary right to the post of Archagar/ Sthanigar and the main ground of attack is that the qualifications that are prescribed in the notification is completely de hors the requirements under the relevant Agama. Therefore, it was contended that the notification, even without prescribing the requirement under the Agama for appointment of Archagar/ Sthanigar, cannot be sustained and the notification is liable to be interfered on this ground alone.

(d) The learned Senior Counsel, to substantiate the above argument, relied upon the judgment of the Apex Court in Adi Saiva Sivachariargal Nala Sangam and Others -vs- Government of Tamil Nadu and Another reported in 2016 (2) SCC 725 and placed specific reliance upon Para 50 in the said judgment. The learned Senior Counsel submitted that the determination for appointment as Archagar/Sthanigar cannot be de hors the custom or usage and whenever that issue is raised, the qualification prescribed under the notification must satisfy the requirement under the Agama for the purpose of performing the function of Archagar/ Sthanigar. The learned Senior Counsel also placed reliance upon Para 51 of the judgment to emphasize that the appointment of Archagar/Sthanigar will have to be made in accordance with the Agamas.

(e) The learned Senior Counsel further placed reliance upon the recent Division Bench judgment of this Court in All India Adi Saiva Sivachariargal Nala Sangam and Others rep.by its General Secretary BSR Muthukumar -vs- State of Tamil Nadu and another reported in 2022 SCC Online (Mad.) 4154. The learned Senior Counsel specifically placed reliance upon Paras 48

to 53 in the above said judgment. By placing reliance upon this judgment, the learned Senior Counsel submitted that a Committee has been appointed to identify the temples constructed as per the Agamas and those temples which are Non-Agamic temples. Till this exercise is completed by the Committee, the learned Senior Counsel contended that the appointment of Archagar/Sthanigar cannot be made since only after determining the particular temple to belong to a particular Agama, the custom and usage of that Agama can be decided. Therefore, when the very first step is yet to be completed viz., determination of Agamic temples, appointing Archagar/Sthanigar by prescribing certain qualifications without determining whether they fulfill the prescriptions under the Agamas will amount to putting the cart before the horse.

(f) The learned Senior Counsel also placed reliance upon the judgment of the learned single Judge in W.P.(MD) Nos.21738 and 21739 of 2022 dated 24.02.2023, wherein the learned Single Judge had taken into account the earlier judgment of the Apex Court and also the judgment of the Division Bench and the learned Senior Counsel specifically placed reliance upon Paragraphs 9 and 10 of the said judgment.

(g) One other ground that was raised by the learned Senior Counsel was that the appointment of Archagar/Sthanigar cannot be done by the HR & CE Department and that in the present case, the 3rd respondent is admittedly administering the temple and he is a servant of the HR & CE Department and therefore the impugned notification is liable to be interfered on this ground also.

3. Per contra, Mr.N.R.R.Arun Natarajan learned Special Government Pleader appearing on behalf of the respondents made the following submissions.

(a) The petitioner had claimed his right as per the pleadings in the affidavit on the ground that he is doing Poojas in his line of succession and it is being done on a hereditary basis. Therefore, the learned Special Government Pleader contended that such hereditary right to be appointed as Archagar/Sthanigar is no longer available by virtue of the judgment of the Apex Court in (1972) 2 SCC 11 Seshammal and Others -Vs- State of Tamil Nadu. For this purpose, the learned Special Government Pleader specifically relied upon Paragraphs 21 to 24 of the judgment.

(b) The learned Special Government Pleader submitted that for the purpose of determining the customs and usages that are practiced in a particular temple by Archagar/Sthanigar, even as per the notification, the applicant is expected to produce the fitness certificate from the Chief Priest. While issuing such a certificate, the Chief Priest will mention about the custom and usage of the temple for which the applicant has been trained and therefore the same will sufficiently take care of the apprehension raised by the petitioner that persons who are not aware about the Agamic practices of the concerned temple will be appointed.

(c) It was further contended that the issue as to whether the temple follows a particular Agama and whether the applicant does not satisfy the same, are factual issues which cannot be decided in a writ petition and at the best it can only go before a competent Court where evidence must be recorded and ultimately a

decision has to be arrived at. Therefore, this issue can never be raised in a writ petition.

(d) It was contended that the requirement of the fitness certificate prescribed under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Rules 1964 has been upheld by the Apex Court in Seshammal's case referred supra. Therefore, the apprehension raised by the petitioner will be sufficiently answered by virtue of the fitness certificate given by the Chief Priest who performs the Pooja in the concerned temple as per the Agamas.

(e) It was further contended that the notification issued by the Executive Officer is perfectly in order and even the Division Bench in All India Adi Saiva Sivachariyargal Nala Sangam's case referred supra at Paragraphs 38 and 39 has made it very clear that the executive authority will also be construed as a Trustee and in his absence the Fit Person appointed under Section 49 of the Act. In the light of this finding, it was contended that the notification issued by the Executive Officer does not suffer from any illegality.

(f) It was further contended that the impugned notification was issued under the 1964 Rules and the challenge to the Rules has already been rejected by the Apex Court in Seshammal's case referred supra. Hence, the petitioner cannot be permitted to put forth a case by relying upon the subsequent Rules which were amended in the year 2020 and the petitioner has to necessarily confine his case only with regard to the 1964 Rules. Hence, the subsequent development that has taken place based on the 2020 Rules cannot be taken advantage by the petitioner.

4. Mr.R.Singaravelan, learned Senior Counsel appearing on behalf of the petitioner, in reply to the last submission made by the learned Special Government Pleader contended that the said Rule did not take away the mandate of fulfilling the requirements under the relevant Agama and in fact, while dealing with this issue in Paragraph 24 of the judgment in Seshammal's case referred supra, such an apprehension was raised before the Apex Court and the Apex Court at that point of time observed that it was unfounded. However, by passage of time whatever apprehension was raised by the Apex Court in 1972 has now come true and there is a direct challenge to the Agamas and to the practices followed under the relevant Agamas.

5. An order in this writ petition will have a wider ramification by virtue of the direction issued by the Division Bench in All India Adi Saiva Sivachariyargal's case cited supra at Para 53. The Division Bench has now constituted a Committee and directed the Committee to identify the Agamic and Non-Agamic temples. Till this exercise is completed, it is not clear as to how the appointment of Archagar/Sthanigar will be made without determining as to whether they fulfil the requirements under the relevant Agamas. Therefore, one thought that came to me at the time of hearing this writ petition was that whether there will be a stalemate in the appointment of the Archagar/Sthanigar for the temples till this exercise is completed by the Committee. This Court has to go into this issue since the petitioner specifically claims that the temple in question is an Agamic temple and therefore the customs and usages must be followed. If qualifications are prescribed in the

notification for the appointment of Archagar/Sthanigar without specifying the fulfilment of the requirement under the particular Agama, it is not known as to how the appointment can be made to the Agamic Temples. To satisfy this requirement, the learned Special Government Pleader places reliance upon Rule 12, under which a fitness certificate is given by the Chief Priest. How far this fitness certificate will satisfy the requirement under the Agama, has to be necessarily examined. Hence, there shall be a direction to the learned Special Government Pleader to produce sample fitness certificate before this Court to have an idea as to the nature of the certificate that is given by the Chief Priest and which is acted upon at the time of considering the appointment of Archagar/Sthanigar. In any event, the learned Special Government Pleader sought for some time to make his submissions on this issue since this order may have wider ramifications. The learned Senior Counsel also submitted that he will make his submissions on this issue.

6. The order thus far has captured the main issues that are involved in this case and the rival contentions raised on either side. The last issue that has been summarised supra requires a very serious consideration since it may impact the appointment of Archagar/Sthanigar going forward till the Committee comes up with its final recommendations by identifying the Agamic and Non-Agamic Temples.

7. Before concluding this order, it must be mentioned that the affidavit filed in support of the writ petition contains averments deriving the right of the petitioner as a hereditary right. If that is the only ground

on which the writ petition was filed, the judgment of the Apex Court in Seshammal's case referred supra will be the direct answer. However, the learned Senior Counsel, in the course of his arguments, has raised larger issues and has contended that the petitioner is questioning the notification on the ground that it does not satisfy the requirements provided under the concerned Agama that governs the subject temple. The respondents will have to meet this ground that has been raised. Hence, there shall be a direction the learned counsel appearing for the petitioner to take steps to file a petition to raise additional grounds on the larger issue that was raised by the learned Senior Counsel. A copy of the same shall be served on the learned Special Government Pleader and the same will enable the respondents to file an additional counter in this writ petition. This process shall be completed before the next date of hearing.

8. Post this writ petition under the caption 'For Passing Further Orders' on 19.06.2023 at 2.15 p.m."

4. Pursuant to the above extracted order dated 08.6.2023, the petitioner filed WMP.No.16927 of 2023 seeking leave of this Court to raise additional grounds in this writ petition. This miscellaneous petition was allowed on 19.6.2023.

5. The first respondent has filed a counter affidavit for the additional grounds raised by the petitioner, dealt with each of the

grounds and come out with the stand of the Department for each of those additional grounds.

6. I have heard Mr.R.Singaravelan, learned Senior Counsel appearing on behalf of Mr.M.Muruganantham, learned counsel on record for the petitioner and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the respondents.

7. The earlier order passed by this Court on 08.6.2023, which has been extracted supra, captures the crux of the issue that is involved in this case. Hence, it is not necessary for this Court to once again reiterate what has already been captured in the said earlier order.

8. The petitioner initially projected his case by laying emphasis on the hereditary right to hold the position as the Sthanikam. This Court, during the previous hearing, brought to the notice of the learned Senior Counsel appearing on behalf of the petitioner the judgment of the Apex Court in the case of ***Seshammal & Others Vs. State of Tamil Nadu [reported in 1972 (2) SCC 11]*** wherein it was

held as follows :

> *"21. It is true that a priest or an Archaka when appointed has to perform some religious functions but the question is whether the appointment of a priest is by itself a secular function or a religious practice. Mr. Palkhivala gave the illustration of the spiritual head of a math belonging to a denomination of a Hindu sect like the Shankaracharaya and expressed horror at the idea that such a spiritual head could be chosen by a method recommended by the State though in conflict with the usage and the traditions of the particular institution. Where, for example, a successor of a Mathadhipati is chosen by the Mathadhipati by giving him mantra-deeksha or where the Mathadhipati is chosen by his immediate disciples, it would be, he contended, extra-ordinary for the State to interfere and direct that some other mode of appointment should be followed on the ground of social reform. Indeed this may strike one as an intrusion in the matter of religion. But, we are afraid such an illustration is inapt when we are considering the appointment of an Archaka of a temple. The Archaka has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. It has been held in K.Seshadri Aiyangar Vs. Ranga Bhattar (ILR 35 Mad. 631) that even the position of the*

hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the unamended Section 56 of the Principal Act which provides 'all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.' That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebaits and Managers of temples exercise essentially a secular function in choosing and appointing, the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office. See: Kali Krishna Ray Vs. Makhan Lal Mookerjee (ILR 50 Cal. 233), Nanabhai Narotamdas Vs. Trimbak Balwant Bhandare [(1878-80) Vol.No.4, Unreported printed judgments of the Bombay High Court, p.169] and Maharanee Indurjeet Kooer Vs. Chundemun Misser (XVI Weekly Reporter 99). Thus the appointment of an Archaka is a secular act and the fact that in some

temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion.

22. In view of Sub-Section (2) of Section 55, as it now stands amended, the choice of the trustee in the matter of appointment of an Archaka is no longer limited by the operation of the rule of next-in-line of succession in temples where the usage was to appoint the Archaka on the hereditary principle. The trustee is not bound to make the appointment on the sole ground that the candidate is the next-in-line of succession to the last holder of office. To that extent, and to that extent alone, the trustee is released from the obligation imposed on him by Section 28 of the Principal Act to administer the affairs in accordance with that part of the usage of a temple which enjoined hereditary appointments. The legislation in this respect, as we have shown, does not interfere with any religious practice or matter of religion and, therefore, is not invalid.

23. We shall now take separately the several amendments which were challenged as invalid. Section 2 of the Amendment Act amended Section 55 of the Principal Act and the important change which was impugned on behalf of the petitioners related to the abolition of the hereditary principle in the appointment

of the Archaka. We have shown for reasons already mentioned that the change effected by the Amendment is not invalid. The other changes effected in the other provisions of the Principal Act appear to us to be merely consequential. Since the hereditary principle was done away with the words "whether the office or service is hereditary or not" found in Section 56 of the Principal Act have been omitted by Section 3 of the Amendment Act. By Section 4 of the latter Act clause (xxiii) of Sub-Section (2) in Section 116 is suitably amended with a view to deleting the reference to the qualifications of hereditary and non-hereditary offices which was there in clause (xxiii) of the Principal Act. The change is only consequential on the amendment of Section 55 of the Principal Act. Sections 5 and 6 of the Amendment Act are also consequential on the amendment of Sections 55 and 56. These are all the sections in the Amendment Act and in our view the Amendment Act as a whole must be regarded as valid.

24. It was, however. submitted before us that the State had taken power under Section 116(2), clause (xxiii) to prescribe qualifications to be possessed by the Archakas and, in view of the avowed object of the State Government to create a class of Archakas irrespective of caste, creed or race, it would be open to the Government to prescribe qualifications for the office of an Archaka which were in conflict with Agamas. Under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 proper provision has been made for qualifications of the Archakas and the petitioners have no objection to that rule. The rule still continues to be in force. But the

petitioners apprehend that it is open to the Government to substitute any other rule for Rule 12 and prescribe qualifications which were in conflict with Agamic injunctions. For example at present the Ulthurai servant whose duty is to perform pujas and recite vedic mantras etc. has to obtain the fitness certificate for his Office from the head of institutions which impart instructions in Agamas and ritualistic matters. The Government, however, it is submitted, may hereafter change its mind and prescribe qualifications which take no note of Agamas and Agamic rituals and direct that the Archaka candidate should produce a fitness certificate from an institution which does not specialize in teaching Agamas and rituals. It is submitted that the Act does not provide guidelines to the Government in the matter of prescribing qualifications with regard to the fitness of an Archaka for performing the rituals and ceremonies in these temples and it will be open to the Government to prescribe a simple standardized curriculum for pujas in the several temples ignoring the traditional pujas and rituals followed in those temples. In our opinion, the apprehensions of the petitioners are unfounded. Rule 12 referred to above still holds the field and there is no good reason to think that the State Government wants to revolutionise temple worship by introducing methods of worship not current in the several temples. The rule making power conferred on the Government by Section 116 is only intended with a view to carry out the purposes of the Act which are essentially secular. The Act nowhere gives the indication that one of the purposes of the Act is to effect a change in the rituals and ceremonies followed in the temples. On the other

hand, Section 107 of the Principal Act emphasizes that nothing contained in the Act would be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section there of by Article 26 of the Constitution. Similarly, Section 105 provides that nothing contained in the Act shall (a) save as otherwise expressly provided in the Act or the rules made thereunder, affect any honour emolument or perquisite to which any person is entitled by custom or otherwise in any religious institution, or its established usage in regard to any other matter. Moreover, if any rule is framed by the Government which purports to interfere with the rituals and ceremonies of the temples the same will be liable to be challenged by those who are interested in the temple worship. In out opinion, therefore, the apprehensions now expressed by the petitioners are groundless and premature."

9. It is clear from the said judgment of the Apex Court in ***Seshammal's case*** that the appointment of an Archaka is a secular act and hence, the hereditary right cannot be claimed. The Apex Court held that an Archaka owes his appointment to the shebaits and managers of a temple and they are the one, who choose the Archaka. Therefore, in the matter of appointment of an Archaka, the rule of next-in-line of succession cannot be insisted and a trustee is not bound to make the appointment on the sole ground that the candidate is

next-in-line of succession to the last holder of the office. Hence, if the petitioner had stuck to his original stand of claiming his right to the position of Sthanikam next-in-line of succession and claimed hereditary right, the prayer would have been rejected by this Court by placing reliance upon the judgment of the Apex Court in ***Seshammal's case.***

10. The learned Senior Counsel appearing on behalf of the petitioner, during the course of arguments, raised certain other issues of importance and thereafter filed a miscellaneous petition to raise additional grounds.

11. The miscellaneous petition that was filed by the petitioner was allowed and hence, those additional grounds that have been raised by the petitioner alone require the consideration of this Court. Additionally, this Court also wanted to get a clarification as to the effect of paragraph 53 of the common order of the Division Bench of this Court in the case of ***All India Adi Saiva Sivachariargal Seva Sangam & Others rep.by its General Secretary BSR Muthukumar Vs. State of Tamil Nadu & another [reported in 2022 SCC Online (Mad.) 4154]*** and wanted the Department to

come up with their stand on the future course of action for appointment of Archakas/Sthanikam in temples.

12. The learned Senior Counsel appearing on behalf of the petitioner, by placing reliance upon the additional grounds raised in the writ petition, submitted that the Executive Officer, who is an Officer belonging to the Department, cannot appoint Archakas/Sthanikam and that it can be done only by the Trustees of the temple. According to the learned Senior Counsel, since there are no trustees for the temple, no question of appointing an Archaka/Sthanikam by the Executive Officer would arise. He would further submit that till the Committee specifically identifies the Agama, to which, the subject temple belongs, there is no question of proceeding further with the appointment of Archakas/Sthanikam since the person sought to be appointed must be well-versed to perform the pooja as prescribed under the Agama.

13. The learned Senior Counsel appearing on behalf of the petitioner also questioned the so called certificate courses that have been recognised by the Department and submitted that the Agamas and Vedhas cannot be learnt by undergoing a certificate course. He

would further submit that the larger question on the religious practice/ faith is sub-judice before the Apex Court in ***Kantaru Rajeevaru (Sabarimala Temple Review - 5 J) Vs. Indian Young Lawyers Association [reported in 2020 (2) SCC 1].*** It was contended that the appointment of an Archaka may be a secular act whereas the ritual that is performed by Archaka for the deity in line with the Agamas is a religious function, which boils down to religious faith and practice. Therefore, the learned Senior Counsel further contended that the Department must await the judgment of the Apex Court in the review petitions before making any appointment of Archakas/Sthanikam.

14. The learned Senior Counsel appearing on behalf of the petitioner concluded his arguments by once again pointing out to paragraph 53 of the common order of the Division Bench of this Court in ***All India Adi Saiva Sivachariargal Seva Sangam's case*** and submitted that if at all the Trustees want to appoint an Archaka/ Sthanikam, it should be strictly in line with paragraph 53 where there is a direction to the effect that appointment of Archakas in the temple, which is governed by Agama, should be strictly done only as per the prescription given by the Agama and not by Rules 7 and 9 of the Tamil

Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020 (hereinafter called the 2020 Rules.

15. Per contra, the learned Special Government Pleader appearing for the respondents, by placing reliance on the counter affidavit filed by the first respondent, submitted that the Division Bench of this Court, in the common order in ***All India Adi Saiva Sivachariargal Seva Sangam's case,*** did not prohibit the appointment of Archakas/Sthanikam till the exercise is completed by the Committee and hence, it is always open to appoint Archakas by following the directions given in paragraph 53 of the common order in ***All India Adi Saiva Sivachariargal Seva Sangam's case.*** It was further submitted that the temple in question is governed by Karanagama and hence, only those persons, who are trained to do poojas as per the prescription given by the Agama, will be appointed as Archakas/Sthanikam.

16. It was also contended by the learned Special Government Pleader for the respondents that the appointment of the Committee became the subject matter of challenge in W.P.No.4531 of 2023 and

that a Division Bench of this Court, by order dated 15.2.2023, granted an order of interim stay and in view of the same, the Committee is not functioning. It was further contended that there is no difficulty in identifying the Agama that governs the subject temple, that it is not necessary to wait for the Committee to submit its report and that the Fit Person can always proceed further to appoint the Archakas/ Sthanikam, who are well-versed to conduct poojas as provided under the relevant Agama.

17. The learned Special Government Pleader for the respondents further contended that the interview is conducted by a team of committee members, who are experts in the relevant field, that the appointment of Archakas/Sthanikam will be taken care by the Committee and that they will ensure that the appointee satisfies all the requirements. He concluded his arguments by submitting that the petitioner is attempting to develop a case beyond the scope of the writ petition, that it is not necessary for this Court to decide the issues based on mere apprehensions and that if ultimately the appointment is not made in accordance with the prescription provided by the Agama, it can always be put to challenge on a case to case basis. Therefore, he

sought for dismissal of the writ petition.

18. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

19. The subject matter of challenge in the above writ petition pertains to an advertisement that was issued by respondents 2 and 3 for filling up the post of Archakas/Sthanikam at Sri Sugavaneswarar Swamy Temple, Salem. When this advertisement was issued, the same was governed by the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 (for short, the 1964 Rules). The 1964 Rules have been replaced by the 2020 Rules. In view of the same, it will be a mere academic exercise to test the advertisement qua the 1964 Rules. It will also be not appropriate to test the impugned advertisement by applying the 2020 Rules. Hence, this Court holds that the legality of the impugned advertisement dated 18.1.2018 qua the 1964 Rules need not be gone into by this Court.

20. This Court had already expressed its mind even in the previous hearing that the petitioner cannot make his claim as a Sthanikam by invoking the hereditary right in view of the judgment of the Apex Court in ***Seshammal's case.***

21. That leaves this Court to deal with the additional grounds that have been raised by the petitioner, which will be of some relevance to bring more clarity on the future course of action that has to be taken by the respondents pursuant to the common order of the Division Bench of this Court in ***All India Adi Saiva Sivachariargal Seva Sangam's case.***

22. There is no dispute with regard to the fact that the temple in question is governed by Karanagama. Consequently, it is an Agamic temple where appointment of Archakas should be governed by the prescription provided by the Agama.

23. In order to understand this issue with more clarity, it is necessary to take note of some of the judgments of the Apex Court hereunder :

(i) In the case of ***Adi Saiva Sivachariargal Nala Sangam & Others Vs. Government of Tamil Nadu & Another [reported in 2016 (2) SCC 725],*** it has been held as follows :

> *"50. What then is the eventual result? The answer defies a straightforward resolution and it is the considered view of the Court that the validity or otherwise of the impugned G.O. would depend on the facts of each case of appointment. What is found and held to be prescribed by one particular or a set of Agamas for a solitary or a group of temples, as may be, would be determinative of the issue. In this regard it will be necessary to re-emphasise what has been already stated with regard to the purport and effect of Article 16(5) of the Constitution, namely, that the exclusion of some and inclusion of a particular segment or denomination for appointment as Archakas would not violate Article 14 so long as such inclusion/exclusion is not based on the criteria of caste, birth or any other constitutionally unacceptable parameter. So long as the prescription(s) under a particular Agama or Agamas is not contrary to any constitutional mandate as discussed above, the impugned G.O. dated 23.05.2006 by its blanket fiat to the effect that, "Any person who is a Hindu and possessing the requisite qualification and training can be appointed as a Archaka in Hindu temples" has the potential of falling foul of the dictum laid down in Seshammal Vs. State of T.N. (1972 (2) SCC 11). A determination of the contours of a claimed custom or usage would be imperative and it is in that light that the validity of the impugned G.O. dated*

23.05.2006 will have to be decided in each case of appointment of Archakas whenever and wherever the issue is raised. The necessity of seeking specific judicial verdicts in the future is inevitable and unavoidable; the contours of the present case and the issues arising being what has been discussed.

51. Consequently and in the light of the aforesaid discussion, we dispose of all the writ petitions in terms of our findings, observations and directions made above reiterating that as held in Seshammal Vs. State of T.N. (1972 (2) SCC 11), appointments of Archakas will have to be made in accordance with the Agamas, subject to their due identification as well as their conformity with the Constitutional mandates and principles as discussed above."

It is very clear from the above judgment that the principles in ***Seshammal's case*** were reiterated and it was held that appointments of Archakas will have to be made in accordance with the Agamas. This was subject to the further caveat that the Agama that is followed is in conformity with the Constitutional mandates and it does not violate the same.

(ii) It is necessary to take note of the judgment in the case of ***A.S.Narayana Deekshitulu Vs. State of A.P. & Others [reported in 1996 (9) SCC 548],*** the relevant portions of which are extracted as hereunder :

"118. There is a distinction between religious

service and the person who performs the service; performance of the religious service according to the tenets, Agamas, customs and usages prevalent in the temple etc. is an integral part of the religious faith and belief and to that extent the legislature cannot intervene to regulate it. But the service of the priest (archaka) is a secular part. As seen earlier, the right to perform religious service has appointment by the owner of the temple or king as its source. The legislature is competent to enact the law taking away the hereditary right to succeed to an office in the temple and equally to the office of the priest (archaka). The hereditary right as such is not integral part of the religious practice but a source to secure the services of a priest independent of it. Though performance of the ritual ceremonies is an integral part of the religion, the person who performs it or associates himself with performance of ritual ceremonies, is not. Therefore, when the hereditary right to perform service in the temple is terminable by an owner for bad conduct, its abolition by sovereign legislature is equally valid and legal. Regulation of his service conditions is sequenced to the abolition of hereditary right of succession to the office of an archaka. Though an archaka integrally associates himself with the performance of ceremonial rituals and daily pooja to the Deity, he is an holder of the office of priest (archaka) in the temple. So are the other office-holders or employees of the temple. In Seshammal's case, this Court had upheld the legislative competence to take away the hereditary right as such.

119. The real question, therefore, is whether appointment of an archaka is governed by the usage and whether hereditary succession is a religious usage? If it is religious usage, it would fall squarely under Article 25(1)(b) of the Constitution. That question was posed in Seshammal's case [1972 (2) SCC 11] wherein this Court considered and held that though archaka is an accomplished person, well-versed in the Agamas and rituals necessary to be performed in a temple, he does not have the status of a head of the temple. He owes his appointment to Dharmakarta or Shebait. He is a servant of the temple. In K. Seshadii Aiyangar v. Ranga Bhattar [I.L.R. 35 Mad. 631], the Madras High court had held that status of hereditary archaka of a temple is that of a servant, subject to the disciplinary power of the trustee who would enquire into his conduct as servant and would be entitled to take disciplinary action against him for misconduct. As a servant, archaka is subject to the discipline and control of the trustee. The ratio therein was applied and upheld by this Court and it was held that under Section 56 of the Madras Act archaka is the holder of an office attached to a religious institution and he receives emoluments and perks according to the procedure therein. This court had further held that the act of his appointment is essentially a secular act. He owes his appointment to a secular authority. Any lay founder of a temple may appoint an archaka. The Shebait or Manager of temple exercises essentially a secular function in choosing and appointing the archaka. Continuance of an archaka by succession to the office from generation to generation does not make any difference to the principle of appointment. No such

hereditary archaka can claim any right to the office. Though after appointment the archaka performs worship, it is no ground to hold that the appointment is either religious practice or a matter of religion. It would thus be clear that though archaka is normally a well-versed and accomplished person in the Agamas and rituals necessary to be performed in a temple, he is the holder of an office in the temple. He is subject to the disciplinary power of a trustee or an appropriate authority prescribed in the regulations or rule or the Act. He owes his existence to an order of appointment - be it in writing or otherwise. He is subject to the discipline on a par with other members of the establishment. Though after appointment, as an integral part of the daily rituals, he performs worship in accordance with Agamas Sastras, it is no ground to hold that this appointment is either a religious practice or a matter of religion. It is not an essential part of religion or matter of religion or religious practice. Therefore, abolition of the hereditary right to appointment under Section 34 is not violative of either Article 25(1) or 26(b) of the Constitution."

The above judgment was once again a reiteration of the principles enunciated in ***Seshammal's case.*** The Apex Court held that the appointment of a Archaka is a secular function and hence, there is no question of claiming any hereditary right. However, the Archaka is expected to be a well-versed and an accomplished person in the Agamas and rituals necessary to be performed in a temple. The Apex Court made it very clear that performance of a religious service is an

integral part of the religion whereas the Priest or the Archaka performing such service is not so. The Apex Court differentiated between the religious portion and the secular portion and held that the religious service by an Archaka is the secular part of the religion and the performance of the religious service is an integral part of the religion. Therefore, the prescription provided by the Agamas gains significance only when it comes to the performance of the religious service. Ex consequenti, any person belonging to any caste or creed can be appointed as an Archaka provided he is a well-versed and an accomplished person in the Agamas and rituals necessary to be performed in a temple.

(iv) The judgment in the case of ***N.Adithayan Vs. Travancore Devaswom Board [reported in 2002 (8) SCC 106]*** also gives a further clarity on the issue. In this case, the Court was encountering an issue where a right was claimed under a custom, which restricted that the Priest or Poojari can only be a brahmin. While dealing with the same, it was held as follows :

> *"17. Where a Temple has been constructed and consecrated as per Agamas, it is considered necessary to perform the daily rituals, poojas and recitations as required to maintain the sanctity of the idol and it is not that in respect of any and every Temple any such*

uniform rigour of rituals can be sought to be enforced, dehors its origin, the manner of construction or method of consecration. No doubt only a qualified person well versed and properly trained for the purpose alone can perform poojas in the Temple since he has not only to enter into the sanctum sanctorum but also touch the idol installed therein. It therefore goes without saying that what is required and expected of one to perform the rituals and conduct poojas is to know the rituals to be performed and mantras, as necessary, to be recited for the particular deity and the method of worship ordained or fixed therefor. For example, in Saivite Temples or Vaishnavite Temples, only a person who learnt the necessary rites and mantras conducive to be performed and recited in the respective Temples and appropriate to the worship of the particular deity could be engaged as an Archaka. If traditionally or conventionally, in any Temple, all along a Brahman alone was conducting poojas or performing the job of Santhikaran, it may not be because a person other than the Brahman is prohibited from doing so because he is not a Brahman, but those others were not in a position and, as a matter of fact, were prohibited from learning, reciting or mastering Vedic literature, rites or performance of rituals and wearing sacred thread by getting initiated into the order and thereby acquire the right to perform homa and ritualistic forms of worship in public or private Temples. Consequently, there is no justification to insist that a Brahmin or Malayala Brahmin in this case, alone can perform the rites and rituals in the Temple, as part of the rights and freedom guaranteed under Article 25 of the Constitution and further claim that any deviation

would tantamount to violation of any such guarantee under the Constitution. There can be no claim based upon Article 26 so far as the Temple under our consideration is concerned. Apart from this principle enunciated above, as long any one well versed and properly trained and qualified to perform the puja in a manner conducive and appropriate to the worship of the particular deity, is appointed as Santhikaran dehors his pedigree based on caste, no valid or legally justifiable grievance can be made in a Court of Law. There has been no proper plea or sufficient proof also in this case of any specific custom or usage specially created by the Founder of the Temple or those who have the exclusive right to administer the affairs - religious or secular of the Temple in question, leave alone the legality, propriety and validity of the same in the changed legal position brought about by the Constitution and the law enacted by Parliament. The Temple also does not belong to any denominational category with any specialized form of worship peculiar to such denomination or to its credit. For the said reason, it becomes, in a sense, even unnecessary to pronounce upon the invalidity of any such practice being violative of the constitutional mandate contained in Articles 14 to 17 and 21 of the Constitution of India.

18. In the present case, it is on record and to which we have also made specific reference to the details of facts showing that an Institution has been started to impart training to students joining the institution in all relevant Vedic texts, rites, religious observances and modes of worship by engaging reputed scholars and Thanthris and the students, who ultimately

pass through the tests, are being initiated by performing the investiture of sacred thread and gayatri. That apart, even among such qualified persons, selections based upon merit are made by the Committee, which includes among other scholars a reputed Thanthri also and the quality of the candidate as well as the eligibility to perform the rites, religious observances and modes of worship are once again tested before appointment. While that be the position, to insist that the person concerned should be a member of a particular caste born of particular parents of his caste can neither be said to be an insistence upon an essential religious practice, rite, ritual, observance or mode of worship nor has any proper or sufficient basis for asserting such a claim has been made out either on facts or in law, in the case before us, also. The decision in Shirur Mutt's case (AIR 1954 SC 282) and the subsequent decisions rendered by this Court had to deal with the broad principles of law and the scope of the scheme of rights guaranteed under Articles 25 and 26 of the Constitution, in the peculiar context of the issues raised therein. The invalidation of a provision empowering the Commissioner and his subordinates as well as persons authorized by him to enter any religious institution or place of worship in any unregulated manner by even persons who are not connected with spiritual functions as being considered to violate rights secured under Articles 25 and 26 of the Constitution of India, cannot help the appellant to contend that even persons duly qualified can be prohibited on the ground that such person is not a Brahamin by birth or pedigree. None of the earlier decisions rendered before Seshammal's case

(1972 (2) SCC 11) related to consideration of any rights based on caste origin and even Seshammal's case (1972 (2) SCC 11) dealt with only the facet of rights claimed on the basis of hereditary succession. The attempted exercise by the learned Senior Counsel for the appellant to read into the decisions of this Court in Shirur Mutt's case (AIR 1954 SC 282) and others something more than what it actually purports to lay down as if they lend support to assert or protect any and everything claimed as being part of the religious rituals, rites, observances and method of worship and make such claims immutable from any restriction or regulation based on the other provisions of the Constitution or the law enacted to implement such constitutional mandate, deserves only to be rejected as merely a superficial approach by purporting to deride what otherwise has to have really an overriding effect, in the scheme of rights declared and guaranteed under Part III of the Constitution of India. Any custom or usage irrespective of even any proof of their existence in pre constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by Courts in the country."

The Apex Court once again held that there is no justification to insist that only a brahmin (in this case, a Malayala brahmin) alone can perform the rites and rituals and that it can be performed by anyone,

who is well-versed, properly trained and qualified to perform the pooja in a manner conducive and appropriate to the worship of the particular deity. Hence, the Apex Court frowned on insisting for a pedigree based on caste to perform the rites and rituals in a temple. This is a further reiteration of the principle that the Archaka performing service in the temple falls under the secular part.

24. It must also be borne in mind that in ***Seshammal's case,*** the Apex Court, in paragraphs 18 and 19 of the judgment, had made it clear that in a denominational temple, the appointment of an Archaka will be made only from the specified denomination, sect or group in accordance with the prescriptions of the Agamas governing that particular temple. This exception was carved out by the Apex Court in ***Seshammal's case*** while categorically holding that the position of an Archaka can never be claimed as a hereditary right.

25. A lot of emphasis was laid on the common order of the Division Bench of this Court in ***All India Adi Saiva Sivachariargal Seva Sangam's case,*** the relevant portions of which are extracted as hereunder :

"48. The issue that remains is in regard to challenge to the appointment of Archaka. The issue aforesaid would also be governed by the judgment of the Apex Court in the case of Adi Saiva Sivachariyargal Nala Sangam and others, supra. If the appointment of Archaka is not made as per the Agamas, the individual would be at liberty to challenge it, however with a clarification that the appointment of Archaka would be made by the trustees or a fit person and not by the HR & CE Department, as it would otherwise offend the provisions of the Act of 1959.

.....

52. If any appointment of Archaka is made offending the Agamas, it would be amenable to challenge before this court by the individual aggrieved person. It is again clarified that the direction in this judgment would apply only to temples which were constructed as per Agamas, and not for any other temple and, therefore, we have not accepted the challenge to Rules 2(c), 2(g), 7, 9 and 11 to 15 of the Rules of 2020, but are applying the doctrine of reading down to protect the rights guaranteed under Articles 16(5), 25 and 26 of the Constitution of India.

53. The Committee would identify the temple or group of temples which were constructed as per Agamas and, while doing it, they would further identify under which Agama, the said temple was constructed. It is leaving those temples which were not constructed as per the Agamas. The temple or group of temples which were constructed as per the Agamas would be governed by the custom and practice not only in respect of the worship of the deity, but in all respects, which includes

even the appointment of Archakas. The appointment of Archakas in the temple or group of temples constructed under the respective Agama shall, accordingly, be governed by the Agamas and not by Rules 7 and 9 of the Rules of 2020. The detailed reason for it was earlier given by the Apex Court in the judgments of Seshammal and others and Adi Saiva Sivachariyargal Nala Sangam and others, supra, and is to be followed."

26. A careful reading of the above extracted portions from the common order of the Division Bench of this Court shows that if the appointment of an Archaka is not made as per the Agamas, the aggrieved person can always challenge it. Further, it has been made clear that only the trustees or the Fit Person can appoint the Archakas and that the Department cannot undertake such an exercise. It has also been made clear that the appointment of an Archaka in an Agamic temple will be governed only by the Agamas and not by Rules 7 and 9 of the 2020 Rules.

27. There is no indication in the said common order of the Division Bench that the Trustees/Fit Person cannot appoint Archakas/ Sthanikam till the Committee finalizes the report. In the instant case, it is not necessary to wait for the report of the Committee since there is

no dispute with regard to the fact that the subject temple is governed by Karanagama. A confusion may arise only in cases where there is no clarity as to whether the temple is an Agamic or Non Agamic temple and in case it is an Agamic temple, to which Agama it belongs. It is not necessary for this Court to get into this issue in the above writ petition where there is no dispute on the Agama that governs the subject temple.

28. The Trustees/Fit Person need not wait for the disposal of the review petitions in ***Kantaru Rajeevaru's case*** where certain substantial issues have been raised. If such appointments are not made awaiting the orders in the review petitions, it will result in confusion. There may be many temples where Archakas are wanted and those temples cannot go without the Archaka to perform the pooja just because the review petitions are pending before the Apex Court.

29. In the considered view of this Court, it is always left open to the Trustees/Fit Person to appoint Archakas/Sthanikam in Agamic temples (where there is no doubt on the Agama that governs the temple) by ensuring that the Archakas/Sthanikam are well-versed,

properly trained and qualified to perform the pooja as per the requirements under the Agama. At the risk of repetition, it is made abundantly clear that the pedigree based on caste will have no role to play in the appointment of Archaka if the person so selected otherwise satisfies the requirements.

30. The Division Bench of this Court, in the common order in ***All India Adi Saiva Sivachariargal Seva Sangam's case,*** while disposing of the writ petitions, specifically mentioned at paragraph 53 of the common order that the appointment of Archakas will be governed by Agamas (for Agamic temples) and not by Rules 7 and 9 of the 2020 Rules. This direction issued by the Division Bench of this Court is binding on the Trustees/Fit Person since it has not been reviewed or reversed or modified at all.

31. Rules 7 and 9 of the 2020 Rules specifically deal with qualification and filling up of vacancies by direct recruitment. The qualification prescribed for indoor employees, which covers Archakas/ Sthanikam, etc., provides for undergoing certificate courses.

32. The learned Senior Counsel appearing on behalf of the petitioner exhorted about these certificate courses and tried to impress upon this Court that Vedhas and Agamas cannot be learnt by undergoing short term courses.

33. It is not necessary for this Court to get into this issue since the Division Bench of this Court, in ***All India Adi Saiva Sivachariargal Seva Sangam's case,*** held that the appointment of Archakas for Agamic temples should be governed only by the Agamas and not by the 2020 Rules. Hence, the qualifications prescribed under the 2020 Rules need not be gone into in this writ petition.

34. The learned Senior Counsel appearing on behalf of the petitioner submitted that the Executive Officer is an employee of the Department and hence, he cannot issue an advertisement and appoint Archakas for an Agamic temple.

35. The Division Bench of this Court, in ***All India Adi Saiva Sivachariargal Seva Sangam's case,*** specifically dealt with this issue and it was held as follows :

> *"39. The clarification aforesaid has been made to read the definition of "Executive Authority" in consonance with the provisions of the Act of 1959 and thereby the term "Executive Authority" would mean the trustees at the first place and in the absence of the trustees, the fit person and the word "Executive Officer" used therein after trustee and fit person would be read in consonance with what has been opined by us hereinabove.*
>
> *40. Now we take up the challenge to the constitutional validity of Rules 11 to 15 of the Rules of 2020. We do not find provisions to be unconstitutional or offending the Act of 1959. Rule 11 of the Rules of 2020 talks about the seniority of the person to be determined by the date on which he was appointed to the category of a post. The right to determine the seniority has been given to the appointing authority and in case more than one vacancy is filled up, the seniority would be determined in the order of the placement of the candidate in the order of rank obtained by them in the list approved by the appointing authority. In case everything is equal, the seniority is to be determined with reference to the age and thereby the elder would be senior to others. We do not find that Rule 11 of the Rules 2020 either offends any of the constitutional provisions or the provisions of the Act of 1959. Thus, challenge to Rule 11 of the Rules of 2020 cannot be*

accepted."

36. The above findings of the Division Bench of this Court make it clear that the Executive Officer, who performs the functions of a Trustee and the Fit Person, will also fall within the definition under Rule 2(g) of the 2020 Rules. In view of the same, the appointment can be made under the 2020 Rules by the Trustees or the Fit Person or the Executive Officer, who is in charge of the affairs of the temple. Thus, the advertisement issued by the Executive Officer under the 2020 Rules cannot be questioned on the ground that he is an officer of the Department.

37. The above discussion was warranted in the present case since the Trustees/Fit Person/Executive Officer must be made aware as to how to proceed further for appointment of Archakas/Sthanikam in Agamic temples.

38. The findings rendered in this order shall be kept in mind while appointing Archakas/Sthanikam in Agamic temples. That apart, while issuing an advertisement and calling for applications, no

reference shall be made to Rules 7 and 9 of the 2020 Rules and the appointment will be governed by the requirements under the Agama. Such requirements shall also be specifically stated in the advertisement. Ultimately, it is left open to the Committee, which consists of experts in the field to satisfy themselves that the persons so selected fulfil the requirements prescribed by the Agama.

39. In the result, the writ petition is disposed of with a direction to the third respondent to issue an advertisement in line with the observations made supra and the Archakas/Sthanikam shall be appointed for Sri Sugavaneswarar Swamy Temple, Salem. The petitioner shall be permitted to perform the poojas till the appointment of the Archakas/Sthanikam. It is also left open to the petitioner to participate in the selection. No costs. Consequently, the connected WMPs are closed.

26.6.2023

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

RS

To

1.The Commissioner, Hindu Religious and Charitable Endowment Department, Nungambakkam High Road, Chennai-34.

2.The Assistant Commissioner, Hindu Religious and Charitable Endowment Department, Office of the Assistant Commissioner, Salem-636001.

3.The Executive Officer, Sri Sugavaneswarar Swamy Temple, Salem-636001.

RS

N.ANAND VENKATESH,J

RS

W.P.No.3997 of 2018 &
WMP.Nos.4916 & 4948/2018
& 12136 of 2022

26.6.2023